



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNSD, MND, MNR, FF

Introduction

This Dispute Resolution hearing was set to deal with an Application by the landlord seeking \$4,600.00 monetary compensation for four months unpaid rent, \$8,225.00 for repairs to the suite, \$5,040.00 for damaged appliances and \$4,600.00 loss of revenue for the remaining 4 months of the fixed term tenancy. The landlord is also claiming \$1,300.00 reimbursement for strata fines imposed during the tenant's occupancy. The total claim is for \$24,915.00.

Preliminary Issues

Service

Although two co-tenants were named as respondents in the application, the landlord provided proof of service only to one of the co-tenants.

The landlord testified that although the tenancy fixed term did not expire until December 31, 2011, the tenants suddenly vacated the unit without notice in August 2011, neglecting to provide their written forwarding address. The landlord testified that they had only succeeded in finding the new address of one the co-tenants. The tenant pointed out that the tenants are only in Canada on student visas.

Sections 88 and 89 of the Act determine the method of service for documents. The Landlord has applied for a Monetary Order which requires that the landlord serve each one of the tenants as set out under Section 89(1). Tenants are jointly and severally responsible for the payment of rent under a tenancy agreement, but in this case, only one tenant had been successfully served with the hearing documents.

As the landlord has not sufficiently proven service of the Notice of Hearing upon the other co-tenant, I find that the landlord's application and monetary claim can only proceed against the tenant who was verified as having been properly served in accordance with the Act.

Statutory Deadline

With respect to an Applicant's right to claim damages from another party, Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Section 67 of the Act grants an Arbitrator the authority to determine the amount and to order payment under these circumstances.

Section 58 (1) of the Act states that, except as restricted under this Act, a person may make an application in relation to a dispute with respect to rights, obligations and prohibitions under the **Act and** rights and obligations under the terms of a **tenancy agreement** that are required or prohibited under the Act, or relate to the use, occupation or maintenance of the rental unit, or use of common areas, services or facilities.

Section 58(2) states that an application under subsection (1), will be determined the dispute **unless**

(a) the claim is for an amount that is more than the monetary limit for claims under the *Small Claims Act*,

(b) the application was not made within the applicable period specified under this Act, or

(c) the dispute is linked substantially to a matter that is before the Supreme Court.

Section 60(1) of the Act, copied below, provides that, should a claimant fail to make application within two years of the date the tenancy ends, a claim arising under this Act or the tenancy agreement ceases to exist.

Specifically the Act states:

Latest time application for dispute resolution can be made

60 (1) *If this Act does not state a time by which an application for dispute resolution must be made, it must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned.*

(2) Despite the Limitation Act, if an application for dispute resolution is not made within the 2 year period, a claim arising under this Act or the tenancy agreement in relation to the tenancy ceases to exist for all purposes except as provided in subsection (3).

(3) If an application for dispute resolution is made by a landlord or tenant within the applicable limitation period under this Act, the other party to the dispute may make an application for dispute resolution in respect of a different dispute between the same parties after the applicable limitation period but before the dispute resolution proceeding in respect of the first application is concluded.

The landlord argued that the tenancy was to end at the expiry of the fixed term, which would be December 31, 2011. The landlord made the application for dispute resolution on October 25, 2014, which is prior to the expiry of 2 years.

However, I find that the tenant had ended the tenancy prior to the agreed-upon termination date of the fixed term. I accept that the tenant moved out in August 2011, as testified by the landlord.

Section 44(1) of the Act provides how a tenancy ends:

A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

- (i) section 45 [tenant's notice];
- (ii) section 46 [landlord's notice: non-payment of rent];
- (iii) section 47 [landlord's notice: cause];
- (iv) section 48 [landlord's notice: end of employment];
- (v) section 49 [landlord's notice: landlord's use of property];
- (vi) section 49.1 [landlord's notice: tenant ceases to qualify];
- (vii) section 50 [tenant may end tenancy early];

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended.
(My emphasis)

In this case I find that the tenancy was terminated by the tenants in August 2011.

I find that in order to comply with the statutory 2-year deadline, the landlord would be required to file the monetary claim for damages before the two-year anniversary date of the tenant's move out date of August 2011.

Given the above, I find that I no longer have jurisdiction under the Act to hear and determine this dispute.

Accordingly, I hereby dismiss the landlord's application without leave to reapply because it was filed beyond the two-year statutory deadline under the Act.

Conclusion

The landlord's application was filed beyond the 2-year statutory deadline under the Act and was dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 04, 2014

Residential Tenancy Branch

