



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Magsen Realty Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes O, FF

Introduction

This an application filed by the tenant seeking a monetary order under section 67 of the Residential Tenancy Act for compensation as a result of a breach of an end to a fixed term tenancy by the landlord and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. The landlord confirmed receipt of the tenant's notice of hearing package by Canada Post Registered Mail sent on August 29, 2014. The landlord also confirmed receipt of the tenant's submitted documentary evidence. The tenant has confirmed receipt of the landlord's submitted documentary evidence.

I find that the parties were served with all necessary documents in accordance with sections 88 and 89 of the Act.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for breach of the tenancy agreement?
Is the tenant entitled to recovery of her filing fee from the landlord?

Background and Evidence

This tenancy began on August 10, 2013 on a fixed term tenancy ending on July 31, 2014, as shown by the submitted copy of the signed tenancy agreement dated July 24, 2013 submitted by both parties. The monthly rent was \$1,550.00 payable on the 1st of each month and a security deposit of \$775.00 was paid on July 24, 2013. Both parties have confirmed that the tenancy ended on July 31, 2014.

The tenant stated in the written details of her application for dispute:

Forced to move out with a false reason (originally claimed that they would be selling the property, but actually rented the unit to someone else already) within a unreasonably short time frame. Landlord would charge \$1,800 plus half month rental to tenant in order to compensate for his loss after requesting a two week extension due to the inability to find a new rental property despite filing five rental applications.

The tenant's agent clarified that the landlord misrepresented the tenancy agreement to the tenant and was told by the landlord's agent that after signing the fixed-term tenancy ending on July 31, 2014 that she would be allowed to enter into a month-to-month tenancy to continue the tenancy after the end of the fixed term. The tenant stated that she was given a false reason to end the tenancy and is now seeking compensation as the landlord ended the tenancy under false pretences.

The tenant failed to provide a specific amount of claim for compensation in her file application or the details of her dispute. The tenant however stated that she was seeking recovery of the cost of moving and the difference in her new rent at her new tenancy.

The tenant states that she was first contacted by the landlord by email on June 11, 2014. The email states that the tenancy with the landlord was coming to an end on July 31, 2014 and that the landlord has decided to not renew this tenancy. The email also states that the intention of the owner is to list it to sell and if the tenant was interested in purchasing the property to notify the landlord.

The landlord confirmed the tenant's claim that the notice to not extend or enter into a new tenancy was given by email on June 11, 2014. The landlord also stated that on June 9, 2014 a letter was sent to the tenant confirming the above information with the request to vacate the premises on July 31, 2014. The tenant confirmed receiving the letter.

The landlord also stated that the provision sought by the tenant is a listed option which was not selected and could have been chosen if those were the agreed terms. The landlord re-argued that no such promises were made to transition the tenancy to a month-to-month tenancy after the end of the fixed-term tenancy. Section 2 of the signed tenancy agreement stated,

At the end of this fixed length of time (please check one option, I or ii)

- i) The tenancy may continue on a month-to-month basis or another fixed length of time.

- ii) The tenancy ends and the tenant must move out of the residential premises.
If you choose this option, both the landlord and the tenant must initial the boxes to the right.

Both copies of the agreement submitted by each party show the selection of option ii and the initials of both the landlord the tenant.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenant to prove on the balance of probabilities that the landlord caused the loss.

Although the tenant stated that she was given verbal assurances by the landlord's agent when she signed the tenancy agreement that the tenancy would continue past the fixed term tenancy of July 31, 2014, the tenant has failed to provide sufficient evidence to support this claim and is contradicted by the signed tenancy agreement. The landlord's agent also has stated that the option sought by the tenant was an available option and could have been chosen by both parties, but was not included in the signed and initialled tenancy agreement.

Under such circumstances of disputed testimony provided, I find that the most reliable evidence of the terms of the residential tenancy is those contained in the signed and initialled tenancy agreement. In this case, these terms clearly show that the continuation of the tenancy beyond July 31, 2014, was not a certainty, although it could be permitted if both parties agreed to an extension of the tenancy. In the absence of any written evidence from the tenant to show that the landlord agreed to changes in the terms of the residential tenancy agreement, I find that the terms of the residential tenancy agreement provided the tenant with no guarantee that the landlord would extend or renew this tenancy past July 31, 2014.

I find based upon the evidence of both parties that the tenant has failed to establish a claim for compensation. Both parties have confirmed that a fixed term tenancy was signed on July 24, 2013 to end the tenancy on July 31, 2014. The landlord notified the tenant of their intentions to end the tenancy in a letter dated June 9, 2014 and again on June 11, 2014 by email which is confirmed by both parties. I dismiss the tenant's application without leave to reapply.

As the tenant has been unsuccessful in the application the tenant is not entitled to recovery of the filing fee.

Conclusion

The tenant's application is dismissed without leave to reapply.

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: March 30, 2015

Residential Tenancy Branch

