



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNL, MNDC, OLC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "*Act*") for:

- more time to make an application to cancel the 2 Month Notice to End Tenancy for Landlord's Use of Property (the "2 Month Notice") pursuant to section 66;
- cancellation of the landlord's 2 Month Notice pursuant to section 49;
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67; and
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement pursuant to section 62;

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord confirmed receipt of the tenant's application and subsequent evidence package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and evidence package.

Preliminary Issue

Upon review of the landlord's evidence package the tenant indicated she only received this package via text the day before the hearing on November 30, 2016. The landlord acknowledged this was the only method and date she sent the evidence package to the tenant.

Rule 3.15 of the *Residential Tenancy Branch Rules of Procedure* establishes that documentary evidence must be received by the applicant and the Residential Tenancy Branch not less than 7 days before the hearing. Therefore I have not relied on the landlord's evidence package to form any part of my decision.

At the outset of the hearing, the parties confirmed the landlord did not issue a 2 Month Notice in the approved form and the tenant did not take possession of the rental unit at any time. Therefore the tenant's application in relation to the cancellation of the 2 Month Notice is dismissed without leave to reapply.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement?

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, two tenants and the landlord entered into a tenancy agreement on March 8, 2016. The tenancy was to begin on August 5, 2016 on a fixed term until August 4, 2017. Rent in the amount of \$1,500.00 was payable on the first of each month. The tenants remitted a security deposit in the amount of \$1,000.00 and pet deposit in the amount of 500.00 at the start of the tenancy.

While out of the country, the tenant received written notification from the landlord via email on May 21, 2016 that the rental unit was no longer available due to a pending offer of purchase. The landlord returned the security deposit and pet deposit with an additional \$100.00 to compensate the tenants.

The tenant secured another rental unit for the start date of July 1, 2016, one month prior to the start date of the fixed term she had entered into with the landlord.

Tenant

It is the tenant's position that the landlord's action of ending the fixed term tenancy agreement entitles her to compensation in the amount of \$10,845.00.

Specifically the tenant seeks compensation in the monetary value equal to half the month's rent for the length of the fixed term, in total \$9,000.00 (\$750.00 x 12). The tenant seeks half the month's rent as she acknowledged the agreement listed two tenants and therefore her monthly rental portion only amounted to \$750.00.

The tenant provided a portioned copy of the tenancy agreement for the new rental unit she secured. In these two pages, a monthly rental rate of \$1,600.00 is indicated. The tenant is seeking the \$100.00 rent difference which she indicates she now pays, for a period of twelve months, totalling \$1,200.00. The tenant testified that in an effort to secure a rental unit quickly, she had to settle for a rental unit that did not allow pets.

Lastly the tenant seeks to recover storage fees she paid between March 2016 and July 2016 in the monthly amount of \$129.00 for a total of \$645.00. The tenant testified that prior to signing the fixed term tenancy with the landlord; she was living at her fathers. With the expectation of the fixed term tenancy commencing in August the tenant placed her items in storage, resided with a friend short term and travelled out of the country. The tenant testified that if she did not sign the fixed term tenancy she would not have put her belongings in storage.

Landlord

The landlord testified the tenants knew the rental unit was listed for sale yet insisted on a fixed term tenancy. The landlord had agreed to enter a fixed term tenancy to commence in August because by this time the listing would have expired. After entering into the fixed term tenancy agreement, and prior to the expiry of the listing the landlord received an offer of purchase. As the rental unit had been listed for over a year the landlord was eager to sell. The landlord immediately notified the tenants via email of the pending purchase and consequent end of tenancy. The landlord returned an additional \$100.00 to compensate the tenants for their inconvenience and attempted to assist them both in obtaining new tenancies.

Analysis

Pursuant to section 16 of the *Act*, the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

The tenancy, that is, the right to occupy the unit, often begins at a later date. In this case, the tenancy agreement began on March 8, 2016 and the tenancy was to commence on August 5, 2016. Because the tenancy agreement began on March 8, 2016, this is when the provisions of the *Act* became enforceable in the relationship between the tenant and landlord.

Based on the testimony of the parties and submitted tenancy agreement, the parties had a fixed term tenancy that was scheduled to end on August 4, 2017. Although the

landlord provided written notice of her intent to end the tenancy on May 21, 2016, she attempted to end the tenancy earlier than the date specified in the fixed term tenancy agreement, which is not in compliance with section 44 of the *Act* that establishes a fixed term tenancy may only end if the landlord and tenant agree in writing to end the fixed term tenancy, the tenant vacates or abandons the rental unit, the tenancy agreement is frustrated or the director orders the tenancy to end.

Section 7 of the *Act* establishes that upon entering a tenancy agreement, a tenant is obligated to pay rent and a landlord is obligated to provide the premises as agreed to in the tenancy agreement. If either party fails to fulfill their obligations, the other becomes entitled to compensation. The purpose of compensation is to ensure the wronged party is made whole as if the breach did not occur.

A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this *Act*, the *Regulation* or their tenancy agreement must do what is reasonable to minimize the damage or loss. In this circumstance, the tenant was unable to occupy the rental unit but managed to mitigate some of her losses by securing another tenancy effective one month prior to the fixed term.

Based on the above, the evidence and testimony, and on a balance of probabilities, I make the following findings.

Although the landlord ended the tenancy contrary to section 44 of the *Act*, thereby breaching the *Act*, this breach does not entitle the tenant to compensation equivalent to what she would have paid in rent for twelve months. As stated above the purpose of compensation is to ensure the wronged party is made whole. Compensation in the manner the tenant is seeking would put the tenant in a position that far exceeds what her original position would have been had the fixed term tenancy materialized. For this reason I dismiss the tenant's monetary claim of \$9,000.00.

I find the tenant's payment of increased rent is the direct result of the landlord's non-compliance with the *Act*. Upon review of the tenancy agreement submitted by the tenant for her new rental unit, the tenancy includes a total of two tenants. Therefore I find it probable the rent of \$1,600.00 is split between the two and the tenant is only responsible for \$800.00. For these reasons, I award the tenant 12 months of the \$50.00 additional monthly rent she now pays in her new unit for a total of \$600.00. In response to the tenant's claim that her new rental unit does not allow pets, I find the tenant has provided insufficient evidence to substantiate this claim. The portion of the tenancy agreement that speaks to pets was not included in the tenant's documentary evidence.

In relation to the tenant's claim for storage, I find the tenant provided insufficient evidence to establish these storage costs were a direct result of the landlord's breach of the *Act*. The tenant chose to enter into a fixed term tenancy effective August 4, 2016 and chose to store her belongings until such time. It remains unproven the tenant chose to store her goods based on the knowledge she had a fixed term tenancy or whether she chose to store her goods because she had to vacate her fathers and was travelling out of the country. I dismiss the tenant's monetary claim in the amount of \$645.00.

As the tenancy has ended and as a landlord's compliance may only be sought in relation to an ongoing tenancy I dismiss the tenant's claim for an order requiring the landlord to comply with *Act*, *Regulation* or tenancy agreement.

Conclusion

The tenant's application for more time to make an application to cancel the 2 Month Notice is dismissed without leave to reapply.

The tenant's application to cancel the landlord's 2 Month Notice is dismissed without leave to reapply.

I issue a monetary order in the tenant's favour in the amount of \$600.00 against the landlord.

The tenant's application for an order requiring the landlord to comply with *Act*, *Regulation* or tenancy agreement 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: December 02, 2016

Residential Tenancy Branch