



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNL MNDC OLC FF O

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, dated February 8, 2017 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a notice to end tenancy for landlord's use of property;
- a monetary order for money owed or compensation for damage or loss;
- an order that the Landlord comply with the *Act*, Regulations or a tenancy agreement;
- an order granting recovery of the filing fee; and
- other unspecified relief.

The Tenant attended the hearing on his own behalf and was accompanied by his spouse and co-tenant, A.R. The Landlord was represented at the hearing by S.N. Although not named in the Application, S.N. is also a landlord. All parties giving evidence provided a solemn affirmation.

The Tenant confirmed that his Application package, including the Notice of a Dispute Resolution Hearing and documentary evidence, was served on the Landlord by registered mail on February 10, 2017. In support, the Tenant provided a copy of a Canada Post registered mail receipt. The Landlord acknowledged receipt on February 14, 2017. I find the Tenant's Application package was received by the Landlord on February 14, 2017.

The Landlord submitted a documentary evidence package in response to the Tenant's Application. On behalf of the Landlord, S.N. testified the package was served on the Tenant by registered mail on February 23, 2017. The Tenant acknowledged receipt on February 27, 2017. I find the Tenant received the Landlord's evidence package on February 27, 2017.

All parties were represented at the hearing and were prepared to proceed. No issues were raised with respect to service and receipt of the above documents. The parties were provided an opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer to only the relevant facts and issues in this Decision.

Preliminary and Procedural Matters

As part of the Application, the Tenant applied to cancel a notice to end tenancy for landlord's use of property. However, it was noted during the hearing that the Tenant vacated the rental unit on January 2, 2017. As the Tenant vacated the rental unit, I find it is not necessary for me to consider the Tenant's request to cancel a notice to end tenancy. This aspect of the Tenant's Application has not been considered further in this Decision.

Issues

1. Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss?
2. Is the Tenant entitled to an order that the Landlord comply with the *Act*, Regulation or a tenancy agreement?
3. Is the Tenant entitled to an order granting recovery of the filing fee?

Background and Evidence

The parties submitted into evidence copies of the tenancy agreement between them. The agreement confirms a fixed-term tenancy for the period from July 5 to December 31, 2016, although the parties agree the Tenant did not move out of the rental unit until January 2, 2017. Rent was due in the amount of \$1,000.00 per month. The Tenant paid a security deposit of \$500.00.

The Tenant claimed \$2,000.00 in compensation because the tenancy was ended without adequate notice. A.R. testified to her belief that there was a verbal agreement the fixed-term tenancy would continue after December 31, 2016, on a month-to-month basis, and that the Landlord breached this agreement by selling the home and requiring them to vacate. The Tenant confirmed rent was paid to December 31, 2016, and that no further payments were made to the Landlord for rent in 2017.

In reply, and on behalf of the Landlord, S.N. disagreed with the submissions made by the Tenant and A.R. She acknowledged there were some discussions about continuing the tenancy after December 31, 2016, but that there was no agreement. She relied upon paragraph 20 of the tenancy agreement, which states:

At the expiration of the Lease, Tenant shall quit and surrender the Apartment, together with all furnishings and inventory contained therein, in as good and complete a condition as at the commencement of this Lease, reasonable wear and tear and damages by the elements excepted.

[Reproduced as written.]

In addition, S.N. relied upon paragraph 19 of the tenancy agreement, which states:

Should Tenant remain in possession of the Apartment with the consent of the Landlord after the expiration of the Term of this Lease, a new tenancy from month to month shall be created.

[Reproduced as written.]

According to S.N., the Tenants were required to vacate the rental unit at the end of the fixed term, and the Landlord never provided consent to continue the tenancy on a month-to-month basis after December 31, 2016. She also noted that the Tenant and A.R. did not pay any rent for January 1 and 2, 2017.

The Tenant's Application also disclosed a monetary claim for \$898.00 for lost wages. However, the Monetary Order Worksheet submitted by the Tenant described a claim for \$268.00 in U.S. dollars. In any event, the Tenant testified that he lost income because he was unable to work for a number of days because the Tenants had to move unexpectedly. In support, he provided a pay stub for the period from January 1-15, 2017.

In reply, S.N. noted that the Tenant's claim for lost wages is ambiguous, and that the pay stub submitted by the Tenant appears to suggest the Tenant was paid in full during that period.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Tenant to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did what was reasonable to minimize the damage or losses that were incurred.

The Tenant claimed \$2,000.00 as compensation for being given inadequate notice of the end of the tenancy. Although I find there were discussions about the end of the tenancy, I conclude the Tenant was a party to a fixed-term tenancy agreement that ended on December 31, 2016, and that the Tenant was required to move out at the end of the fixed term. I find there is insufficient evidence before me to conclude the Landlord consented to continue the tenancy on a month-to-month basis after December 31, 2016. Accordingly, I find that this aspect of the Tenant's Application is dismissed.

The Tenant's evidence with respect to the calculation of his wage loss was ambiguous, particularly in light of the discrepancy between the amounts claimed in the Application and on the Monetary Order Worksheet. Further, the Tenant's own testimony was that the course he claimed to have missed took place from December 28-31, 2016 and January 5-8, 2017. It appears there would have been sufficient time to move out on January 2, 2017, when the course was not in session. I also note that the co-tenant,

A.R., was also available to move the Tenant's belongings. This aspect of the Tenant's Application is dismissed.

The Tenant sought an order that the Landlord comply with the *Act*, Regulation or a tenancy agreement. However, I was not referred to any provision with which the Landlord ought to comply. This aspect of the Tenant's claim is dismissed.

As the Tenant has not been successful, I decline to grant recovery of the filing fee paid to make the Application.

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 18, 2017

Residential Tenancy Branch