



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RED DOOR HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, O

Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (the “Act”) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- other relief.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The corporate landlord was represented by its two agents. The landlord’s agent ICW (the “landlord”) primarily spoke for the landlord. The tenant testified on her own behalf with the assistance of counsel.

As both parties were in attendance I confirmed that there were no issues with service of the tenant’s application for dispute resolution or either party’s evidentiary materials. The parties confirmed receipt of one another’s materials. In accordance with sections 88 and 89 of the *Act*, I find that the parties were duly served with copies of the tenant’s application and their respective evidence.

Issue(s) to be Decided

Is the tenant entitled to a monetary award for damages?

Background and Evidence

The landlord is a non-profit society which manages a number of rental units. The tenant was a resident in a rental unit operated by the landlord. That tenancy was the subject of a previous hearing under the file numbers on the first page of this decision. At the

earlier hearing the parties entered a settlement agreement which included the provision that:

The Tenant accepts the Landlords offer of a transfer of tenancy to a rental unit in Coquitlam, and the Tenant agrees to enter into a fixed term tenancy agreement for the new unit.

The tenant's present application alleges that the landlord violated the term of the earlier settlement agreement and the tenant has consequently suffered damages and loss.

The parties agreed that the tenant was presented with a new fixed term tenancy for a rental unit in Coquitlam in accordance with the settlement agreement. This fixed term tenancy agreement included a clause which stated that, at the end of the fixed term tenancy on May 31, 2016 the tenancy ends and the tenant must move out of the residential premises. The tenant testified that she was informed by the landlord that the rental unit was in a building scheduled to be torn down after the end of the fixed term tenancy and there was no possibility of the tenancy continuing past the May, 2016 date.

The tenant testified that she did not sign the new tenancy agreement as she felt that it violated the spirit of the settlement agreement. The tenant said that one of the issues that were the subject of the earlier hearing was the landlord's use of successive fixed term tenancies. She said that she agreed to settlement on the understanding that there would not be a move out clause in the new tenancy agreement. The tenant said that the settlement agreement was made in bad faith by the landlord who withheld the information that they intended to include a move out clause in the new agreement.

The landlord testified that their standard practice is to include a move out clause in all of their fixed term tenancy agreements. The landlord said that the clause was included in the new tenancy agreement as per their routine practice. The landlord said that the terms of the settlement agreement does not require the fixed term tenancy agreement to be renewable.

The tenant said that as a result of the landlord's failure to provide a tenancy agreement without a move out clause the tenant was unable to enter a new tenancy. The tenant claims the amount of \$4,275.34 for damages and loss under the following heads:

ITEM	AMOUNT
Moving Truck Fee	\$111.28
Consultation with Lawyer	\$28.00

Supplies for December, 2016 hearing	\$74.03
Supplies for May, 2017 hearing	\$56.43
Storage Fees (5 Months)	\$1,005.60
Pain and Suffering	\$3,000.00
TOTAL	\$4,275.34

Analysis

The principle of *res judicata* prevents an applicant from pursuing a claim that has already been conclusively decided. In the written decision of December 5, 2016 the other arbitrator recorded the terms of the settlement agreement entered by the parties. I find that this is a conclusive and binding decision. Therefore, I find that I do not have the jurisdiction to make a new finding of fact in regards to the earlier application. I am not able to look behind the express terms of the settlement agreement to make a finding regarding the spirit of the settlement, nor do I have the ability to find that the settlement agreement was entered in bad faith. I find that I have no jurisdiction to consider a matter that has already been the subject of a final and binding decision by another arbitrator appointed under the Act. In the present application I can only determine if the terms of the settlement agreement have been followed.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the Act, regulations or a tenancy agreement. 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 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.

I find that the tenant was presented with a new fixed term tenancy agreement for a rental unit in Coquitlam pursuant to the term of the settlement agreement. While I understand that the tenant felt that the inclusion of a move out clause in the new agreement violated the terms of the settlement, I find that there is no express provision in the settlement agreement prohibiting the landlord from including it. Therefore, I find that the landlord satisfied the term of the settlement agreement. Consequently, I am unable to find that there has been a violation of an agreement which has resulted in the damages and loss suffered by the tenant.

Conclusion

The tenant's claim is 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: May 19, 2017

Residential Tenancy Branch