



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDC, OLC, FF

Introduction

This hearing dealt with the tenant's application 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;
- an order that the landlord comply with the *Act*, regulations or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

Both parties attended and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The co-landlord PL (the "landlord") primarily spoke on behalf of both landlords.

As both parties were present service of documents was confirmed. The parties each testified that they had been served with the other's materials. Based on the undisputed testimonies I find that the landlords were served with the tenant's application for dispute resolution and evidence and the tenant with the landlord's evidence in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?

Should the landlord be ordered to comply with the *Act*, regulation or tenancy agreement?

Is the tenant entitled to recover the filing fee from the landlords?

Background and Evidence

The parties agreed on the following facts. This periodic tenancy began in 2015. The monthly rent at the end of the tenancy was \$1,450.00 payable on the first of each month. A security deposit of \$700.00 was paid at the start of the tenancy.

On June 15, 2017 the landlord sent the tenant a text message informing her that the tenancy would be coming to an end as the landlord's child would be moving into the rental unit. The parties testified that the landlord did not issue a 2 Month Notice to End Tenancy form at any point.

The tenant vacated the rental unit at the end of August, 2017. The tenant submits that circumstances were difficult after moving out. The tenant testified that after the tenancy ended she became aware that the rental unit was listed for sale and that the landlords did not use the suite for the stated purposes.

The tenant seeks a monetary award in the amount of \$5,118.57 for various losses and compensation of an amount equivalent to 2 month's rent.

Analysis

Section 49(7) of the *Act* provides that a landlord's Notice to End Tenancy for Landlord's Use must comply with the form and content requirement of section 52.

Section 52 sets out the requirements of a Notice to End Tenancy as follows:

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
- (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied

by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and (e) when given by a landlord, be in the approved form.

The text message sent by the landlord on June 15, 2017 does not comply with the form and content requirements. Therefore, this was not an effective notice and there was no obligation on the part of the tenant to vacate the rental unit or dispute the notice. Similarly, there is no obligation on the landlord to take steps to accomplish the purpose stated in the text conversation.

The tenancy did come to an end on August 31, 2017 but there was no obligation on the parties to do so. The tenant had the option of remaining in the rental unit and continuing the tenancy until the landlord issued a proper Notice to End Tenancy in accordance with the Act. The tenant did not do so. Instead the tenant entered into an agreement with the landlord to vacate the rental unit on August 31, 2017.

I find that the tenancy ended on August 31, 2017 by agreement. The tenant was not obligated to vacate the rental unit at that time. The tenant made the choice to accept the text message from the landlord to end the tenancy.

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.

Under the circumstances I find that any losses incurred by the tenant as a result of moving out are not attributable to the landlord. The tenant made the decision to move out when there was no requirement that she do so. I find that any losses resulting as a result of the tenant's choice are not recoverable from the landlord. This portion of the tenant's application is dismissed.

As the landlord did not issue a 2 Month Notice to End Tenancy pursuant to section 49, the landlord is not obligated to take steps to accomplish the stated purposes of ending the tenancy. I therefore dismiss this portion of the tenant's application.

As the tenant's application was not successful the tenant is not entitled to recover the filing fee for this 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: April 17, 2018

Residential Tenancy Branch