



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT FFT

Introduction

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

- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord's agent, MB ("landlord"), appeared on behalf of the landlord in this hearing, and had full authority to do so. Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord confirmed receipt of the tenants' application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenants' application. As the tenants confirmed receipt of the landlord's evidentiary materials, I find that these documents were duly served to the tenants in accordance with section 88 of the *Act*. The tenants did not serve the landlord with their evidence for this hearing in accordance with section 88 of the *Act*, and accordingly, the tenants' written evidence will be excluded for this hearing.

Issues(s) to be Decided

Are the tenants entitled to a monetary order for compensation for money owed under the *Act*, regulation, or tenancy agreement?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

Both parties signed a written tenancy agreement on October 3, 2017 for a 1 year fixed-term tenancy to begin on November 1, 2017. Monthly rent was set at \$2,400.00, and the tenants paid the landlord a \$1,200.00 security deposit. A copy of the written tenancy agreement was submitted in evidence. It was undisputed by both parties that the tenants received an email on October 10, 2017 from the landlord's agent that the owner of the property no longer wanted to proceed with the tenancy, and wanted to select their own tenants.

The tenants testified that the landlord's agent was notified by the owner of this decision on October 6, 2017, and the tenants were not informed until October 10, 2017. The tenants testified that with less than 30 days' notice they were under pressure to locate a new home as they had already given notice to their previous landlord. The tenants were able to find a new home to rent for November 1, 2017, that was also 3 bedrooms, and similar in size, but for \$400.00 more a month. The tenants are seeking compensation in the amount of \$4,800.00, which is the equivalent of the additional \$400.00 multiplied by the 12 months of the tenancy agreement that they had signed. The tenants testified that this was a comparable property, and that they had mitigated their costs under the circumstances that they were in. The tenants testified that the landlord did not offer any compensation, and attempted to pass them off to a different property manager.

The landlord did not dispute the tenants' testimony that they had ended the tenancy before the fixed term tenancy was to begin. The landlord testified that they did offer to assist the tenants in finding a new rental property at equal or lesser monthly rent, but the tenants did not pursue this option. The tenants disputed this, stating that the landlord had never assisted them in finding a new rental for less rent, and that they had located a comparable rental property on their own that suited their needs.

Analysis

Section 44 of the *Residential Tenancy Act* reads in part as follows:

44 (1) *A tenancy ends only if one or more of the following applies:*

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:...

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

- (c) the landlord and tenant agree in writing to end the tenancy;...*
 - (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:*
 - (i) section 45 [tenant's notice];*
 - (i.1) section 45.1 [tenant's notice: family violence or long-term care];*
 - (ii) section 46 [landlord's notice: non-payment of rent];*
 - (iii) section 47 [landlord's notice: cause];*
 - (iv) section 48 [landlord's notice: end of employment];*
 - (v) section 49 [landlord's notice: landlord's use of property];*
 - (vi) section 49.1 [landlord's notice: tenant ceases to qualify];*
 - (vii) section 50 [tenant may end tenancy early];*
 - (b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;*
 - (c) the landlord and tenant agree in writing to end the tenancy;*
 - (d) the tenant vacates or abandons the rental unit;*
 - (e) the tenancy agreement is frustrated;*
 - (f) the director orders that the tenancy is ended;*
 - (g) the tenancy agreement is a sublease agreement.*

It was undisputed by both parties that the landlord had ended this fixed-term tenancy in a manner that does not comply with section 44 of the *Act*. The tenants had never agreed to mutually end this tenancy in writing, nor did the landlord serve the tenants any Notices to End Tenancy.

The evidence is clear that the landlord did not comply with the *Act* in ending this fixed term tenancy, and I therefore find that this tenancy was ended in a manner contrary to section 44 of the *Act*. The evidence of the tenants is that they had already given notice to their old landlord and under the conditions that they were in due to the landlord's actions, they suffered a monetary loss of \$4,800.00 as they had to find a comparable residence and term, but which cost them \$400.00 more in monthly rent.

I am satisfied that the tenants had made an effort to mitigate the landlord's exposure to the tenants' monetary loss as is required by section 7(2) of the *Act*. I accept the undisputed testimony of the tenants that the landlord had given the tenants less than 30 days' notice in ending this 1 year fixed-term tenancy, and I find that the landlord had failed to provide sufficient evidence to support that the landlord had assisted the tenants in locating a new residence at less monthly rent. Accordingly, I find that the tenants are entitled to a monetary order in the amount of \$4,800.00 in satisfaction of the additional monthly rent the tenants are now required to pay due to the landlord's failure to comply with section 44 of the *Act*.

I find that the tenants' Application has merit and that the tenants are entitled to recover the fee for filing this Application.

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$4,900.00 for the landlord's failure to comply with section 44 of the *Act*. This includes the recovery of the \$100.00 filing fee for this application.

The tenants are provided with a monetary order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: August 7, 2018

Residential Tenancy Branch