



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFT MNDCT OPT OT

Introduction

This hearing dealt with the tenant's 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;
- an Order of Possession of the rental unit pursuant to section 54; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

While the tenant attended the hearing by way of conference call, the landlord did not. I waited until 9:41 a.m. to enable the landlord to participate in this scheduled hearing for 9:30 a.m. The tenant was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant provided sworn, undisputed testimony that she had served the landlord with this application for dispute resolution hearing package ("Application") and evidence by way of Registered Mail on August 9, 2018. The tenant provided the tracking information in her evidence. In accordance with sections 88, 89, and 90 of the *Act*, I find that the landlord was deemed served with the tenant's application and evidence on August 14, 2018, five days after mailing. As the tenant confirmed receipt of the landlord's evidence for this hearing, I find that the tenant was served with the evidence in accordance with section 88 of the *Act*.

At the beginning of the hearing the tenant indicated that she was no longer seeking an Order of Possession. Accordingly, this portion of her application was cancelled.

Issues(s) to be Decided

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

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This fixed-term tenancy was to begin on August 1, 2018, but the tenant was never able to move in. The tenant included a copy of the tenancy agreement in her evidence, which indicated that this tenancy was to begin on August 1, 2018. The agreement was signed on July 13, 2018. Monthly rent was set at \$500.00, payable on the first day of the month. A security deposit in the amount of \$250.00 was paid by the tenant, which was returned to her.

The tenant testified that the landlord had decided revoke the tenancy agreement before she had an opportunity to move in due to a text message sent by the tenant, which the landlord considered to be a form of bullying.

The tenant is seeking compensation in the amount of \$467.64 for the cost of her accommodation as she was unable to move in on August 1, 2018 as agreed on.

Analysis

Section 44 of the *Act* states how a tenancy may be ended:

How a tenancy ends

- 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:
 - (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.

(2) [Repealed 2003-81-37.]

(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

Section 16 of the *Act* states the following about when a tenancy agreement takes effect.

Start of rights and obligations under tenancy agreement

16 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.

I find that both parties had agreed to enter into a tenancy agreement that was to begin on August 1, 2018. Both parties, as stated in Section 16 of the *Act*, were therefore bound by the rights and obligations required by this tenancy agreement and *Act* despite the fact that the tenant was never able to occupy the rental unit. The undisputed testimony of the tenant was that the landlord had unilaterally decided to end this tenancy before the tenant was able to move in. Neither party had signed any Mutual Agreements to end tenancy, nor did the landlord issue any Notices to End Tenancy to the tenant. The landlord did not have an Order of Possession, nor do I find that that the tenant abandoned this tenancy. Based on these facts, I find that the landlord failed to comply with section 44(1) of the *Act* in ending this tenancy.

I accept the tenant's evidence that she had to find accommodation after the landlord prohibited her from moving in on August 1, 2018. I find that the tenant provided sufficient and detailed evidence to support the value of the monetary loss claimed by the tenant. I am satisfied that the tenant had made an effort to mitigate the landlord's exposure to the tenant's monetary losses as

is required by section 7(2) of the *Act*. I find that the tenant's monetary claim for the reimbursement of the cost of accommodation to be reasonable considering that the landlord ended the tenancy before the tenancy was to begin, in a manner that contravened the *Act*. Accordingly, I find that the tenant is entitled to a monetary order in the amount of \$497.64 in satisfaction of the monetary loss suffered by the tenant due to the landlord's failure to comply with section 44(1) of the *Act*.

As the tenant was successful in her application, I allow the tenant to recover the filing fee for this application.

Conclusion

I find that the tenant is entitled to her monetary claim of \$497.64 plus the filing fee for this application. I issue a monetary order in the tenant's favour in the amount of \$597.64.

The tenant(s) is 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.

The tenant cancelled her application for an Order of Possession.

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: October 3, 2018

Residential Tenancy Branch