



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCT**

Introduction

This is an application by the tenant under the Residential Tenancy Act (“the *Act*”) for a monetary order for damage or compensation under section 67.

The tenant appeared with her representative IC (“the tenant”). The landlords appeared (“the landlords”). Both parties were given the opportunity to make submissions as well as present affirmed testimony and written evidence.

The landlords acknowledged receipt of the Notice of Hearing and the Application for Dispute Resolution. No issues of service were raised. I find the landlords were served under section 89 of the *Act*.

The tenant submitted a copy of a previous arbitration decision regarding this tenancy, to which reference is made on the first page of this decision. In that case, the tenant’s application was dismissed with leave to reapply.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for damage or compensation under section 67?

Background and Evidence

The parties agreed they entered into a tenancy agreement beginning August 1, 2014 and ending when the tenant vacated on May 14, 2016. Rent was \$1,000.00 a month due on the first of the month.

The tenant submitted three pages of the tenancy agreement in evidence. One page contained a clause which stated the tenancy was for a fixed term ending May 31, 2018. This clause is initialed by the landlord MS. There are initials in the tenant's box. The tenant denies the initials were hers, or that the tenancy agreement was for a fixed term. The tenant stated the tenancy was month-to-month. The landlords state the tenancy was for a fixed term.

The landlords testified that during some time in April 2016, they agreed to sell the unit with a closing date on May 15, 2016. As a result, the landlords approached the tenant mid-April to discuss if she was willing to move out on May 15, 2016, two weeks before the end of the term of the tenancy, May 31, 2016.

After discussions, the parties signed two 1-page agreements and a Mutual Agreement to End Tenancy, all of which the tenant submitted as evidence.

The first 1-page agreement dated April 14, 2016 contained 8 clauses and included the following relevant terms:

- The tenant agreed to move out on May 15, 2016 prior to May 31, 2016, the end date of the fixed term tenancy;
- The landlords agreed to pay the tenant compensation of \$1,000.00
- The tenant would also receive the following:
 - "Offer to assist in packing";
 - "An additional \$500.00 in compensation";
 - Compensation equal to one-half month's rent;
 - "Confirms that the current lease that ends May 31, 2016 is a fixed term contract".

The eighth clause is crossed out but can be read. It states as follows:

If [tenant] is still occupying the suite past May 15, 2016 at 10:00 am she may be subject to legal action from the new owners and be forced to pay additional expenses that the new owners may incur.

The landlords stated they left the agreement signed by the landlord IA with the tenant for her to consider and consult her family. The landlords testified they continued negotiating with the tenant, her son and her daughter-in-law.

The parties entered into a second agreement dated April 22, 2016, a copy of which the tenant submitted. It includes a clause which states the earlier offers are "void and retracted".

The parties testified that their intention was that the second agreement replaced the first agreement. The second agreement contained 9 numbered clauses and included the following relevant terms:

- The tenant agreed to move out May 15, 2016;
- The tenant would receive free rent from May 1-14, 2016 if she moved out on May 14, 2016;
- Tenant would receive the damage deposit of \$500.00 on the day she moved out;
- The tenant would receive the following:
 - "One month's rent compensation totalling \$1,000.00";
 - The tenant would sign a Mutual Agreement to End Tenancy;
 - "[the tenant] Confirms that [landlords] have provided notice of the purchase and sale of their condo unit and that they have emailed and texted multiple condo and suite options from [web sites] and have been in contact with her family to assist in finding suitable options even though they are not obligated to";
 - "Confirms that the current lease that ends May 31, 2016 is a fixed term contract".

The parties agreed the tenant's daughter-in-law, MM, was present during the signing of the second agreement. The landlord IA, the landlord MS, the tenant, and MM all signed the second agreement.

The parties entered into a Mutual Agreement to End Tenancy ("Mutual Agreement") dated April 22, 2016, a copy of which the tenant submitted in evidence. The landlord IA, the landlord MS, the tenant, and MM all signed. The agreement provided the tenant would vacate the unit on May 15, 2016.

The tenant vacated the unit on May 15, 2016. The landlords returned the damage deposit. The landlords provided the compensation of \$1,000.00 agreed upon in the second agreement. The tenant did not pay rent for May 2016. In essence, the parties carried out the terms of the second agreement and each met their obligations.

The tenant's claims are founded on her testimony that the landlords made certain oral promises to her during April 2016. She testified the landlords broke these promises and as a result she incurred expenses for which the landlords are responsible.

In summary, the tenant testified she incurred storage, packing and moving costs for which the landlords promised reimbursement. The landlords stated they did not agree to provide reimbursement for these expenses.

The tenant testified she would never have agreed to move out of the unit without the promises of the landlords to pay her packing, storage and moving costs. As evidence of the agreements, she stated the landlord IA phoned a storage company, provided his credit card details and then refused to pay the invoice when it came due two months after she vacated the unit. The landlord IA agreed to set up an account for the tenant at a storage company. However, he testified he did so for the sole purpose of helping her and not with the intention of paying for the storage fees.

The tenant acknowledged that these promises are not in the second agreement and she had no evidentiary proof the landlords made these commitments.

However, the tenant stated that English is her second language. She testified she is elderly and relied on the landlords to do what they said they would do. She claimed the landlords bullied her and threatened her with legal proceedings. She points to clause # eight of the first agreement (crossed out and referenced above) as evidence of their threats and intimidation.

The tenant claims reimbursement from the landlords as follows:

ITEM	AMOUNT
Storage fee	\$850.07
Moving and packing fees	\$159.50
Moving and packing fees	\$1,500.00
Total	\$2,509.57

The tenant submitted invoices to substantiate each of these expenses.

The tenant also claims the landlords owe her three months rent as a reasonable period of notice rather than the compensation set out in the second agreement. She said it was much harder than she expected to find accommodations; she had to live in temporary accommodations until she was able to buy a home.

The tenant stated the landlords pressured her into leaving before she had to. As a result, she was inadequately prepared for the challenges of finding new accommodation. To do so, she had to cash investments and incurred certain losses, a cost which she would otherwise not have incurred if the landlords had given her more notice. Consequently, the tenant claims reimbursement of \$4,925.97 being the amount she lost on a financial investment.

The landlords deny any obligation for this expense. They testified the tenant freely entered into the second agreement and the Mutual Agreement. They stated they are not responsible for subsequent expenses the tenant unexpectedly incurred.

Analysis

I have considered all the submissions and evidence presented to me, including those provided in writing and orally. I will only refer to certain aspects of the submissions and evidence in my findings.

In accordance with section 44 of the *Act*, a periodic tenancy ends in certain circumstances, one of which is when the landlord and tenant agreed in writing to do so. There is no statutory basis in the *Act* for a tenant to rescind a Mutual Agreement to End a Tenancy once made.

The tenant and landlord agreed in writing the tenancy would end May 15, 2016. This is reflected in the second agreement and the Mutual Agreement described above.

The tenant testified she was threatened and intimidated by the landlords into signing the agreements. This is analogous to the claim of “duress”.

If the tenant could establish duress, a contractual basis for rescission would be established. That is, establishing duress would release the tenant from the second agreement, including the Mutual Agreement.

In considering the tenant’s claim for duress, I understand the move from the unit was stressful for the tenant. She testified she found the situation upsetting and disturbing. I accept she had unexpected expenses as she could not quickly find a new place to live. I understand she was not financially prepared for packing, storage and moving expenses. I accept that she unexpectedly had to cash savings in order to find a new place to live.

In providing evidence, the tenant appeared composed and articulate. She showed a clear understanding of the agreements. She was forthright in acknowledging that she did not expect the challenges she faced on relocating. I find the tenant was remorseful about the deal the parties negotiated and resentful of the landlords. However, this does not amount to grounds to set aside the agreement between the parties and the Mutual Agreement for duress.

I have considered whether the tenant protested during the signing of the documents; whether, at the time she entered into the contracts, she did not have an alternative course open to her, such as an adequate legal remedy; whether she had independent advice; whether she took steps before and after the contract was signed to set it aside.

Considering all the evidence submitted and the testimony of the parties, I find the tenant has not established duress. At any time during negotiations, the tenant was free to obtain independent counsel. During the negotiations, she testified her family was present. After the contract was signed, she took no steps to set it aside for a considerable period.

In considering the testimony of the parties and the evidence submitted, I find the tenant freely entered into the second agreement and the Mutual Agreement. I find the tenant has failed to establish any reasonable possibility that there were threats, coercion or duress compelling her to sign either of these documents. I find the tenant's claim of duress fails.

Also, I find that the tenant has not met the burden of proving on a balance of probabilities that the landlords promised her reimbursement for the packing, storing and moving expenses. The tenant has called no witnesses to testify to the existence of this agreement. The tenant has produced no supporting documents.

I now turn to the tenant's remaining claims for damages.

Section 67 of the *Act* establishes if damage or loss results from a tenancy, an Arbitrator may determine the amount and order a party to pay compensation to the other. To claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

I have no doubt the tenant incurred the expenses she claimed for packing, storage and moving in support of which she submitted receipts.

The tenant has submitted no evidence the landlords promised to pay for these expenses or should be responsible for them.

The evidence that the landlord IA provided his credit card information to a storage company raises a possibility of an intention to pay. The landlord IA has effectively explained this action by his testimony that the sole purpose of providing the credit card information was to open an account at the storage facility for the tenant. The landlords testified they never promised to pay the storage expenses or any other expenses claimed by the tenant.

In the absence of any evidence that the landlord promised to pay for the expenses claimed by the tenant, I find the tenant has failed to meet the burden of proving on a balance of probabilities that the landlords promised to do so, or that there has been a violation by the landlords of the *Act*, regulations or tenancy agreement.

The tenant claims she should have received more compensation than she did for moving out. She claims she should have received three months rent (\$3,000.00) and not \$1,000.00 plus ½ month's rent, for a total value of \$1,500.00.

I find the parties freely entered into the second agreement and the Mutual Agreement; I have previously examined the circumstances of these agreements and have found no duress was present. I find the agreement and the Mutual Agreement to be enforceable agreements between the parties.

The tenant has similarly not met the burden of proving on a balance of probabilities that the landlords are responsible for her loss of investments. The tenant used the funds to purchase a home. I find the landlords were not in breach of any obligation under the *Act*, the regulations or the tenancy.

The tenant has failed on a balance of probabilities to prove that the landlords are in breach of the *Act*, regulations or tenancy agreement.

I therefore dismiss the tenant's application without leave to reapply.

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: November 8, 2018

Residential Tenancy Branch