



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

This hearing dealt with an application by the tenant under *The Residential Tenancy Act* ("the *Act*") for a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67.

The tenant and the landlord CC ("the landlord") appeared and provided affirmed testimony. The named respondent HC testified that he is the lawyer for the landlord CC and is not the landlord although named as a landlord in the tenant's application. HC represented the landlord CC during the hearing. Each party was given a full opportunity to present evidence, to cross-examine the other party and to call witnesses.

Each party acknowledged receipt of the materials of the other party. No issues of service were raised. I find each party was served in accordance with the provisions of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the tenant, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings are set out below.

The tenant testified to the following facts. He entered into a tenancy agreement with the landlord about twenty years ago. He paid \$450.00 a month rent payable on the first of the month. The tenant stated the landlord returned his security deposit paid at the beginning of the tenancy.

The landlord testified she entered into an Agreement of Purchase and Sale on June 12, 2017 for the sale of the building in which the unit was located, a condition of which was that the building be vacant. The landlord submitted a copy of the Agreement in evidence.

The landlord issued two Notices to End Tenancy. The landlord issued the first Notice on July 31, 2017. It was a Two Month Notice to End Tenancy for Landlord Use of Property ("Two Month Notice") and stated the landlord had all necessary permits and approvals required by law to demolish the rental unit or renovate or repair the rental unit in a manner that requires the rental unit to be vacant. The landlord issued the second Notice on August 25, 2017. It was a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Ten-Day Notice) as the tenant did not pay rent when due for July or August 2017.

The landlord testified to many discussions with the tenant regarding the terms on which he would agree to vacate the unit. The tenant and the landlord subsequently entered into a written agreement dated August 31, 2017 ("Agreement"), a copy of which the landlord submitted as evidence. Both parties signed the Agreement. The key points of the Agreement are as follows:

- The parties agreed the tenancy agreement between them would terminate because of unpaid rent on October 15, 2017;
- The tenant agreed to vacate the unit on or before October 15, 2017;
- Providing the tenant vacated on or before October 15, 2017, the landlord would take no steps to enforce an order of possession or monetary order for outstanding rent from the tenant.

The tenant testified he vacated the unit in early to mid October 2017. He acknowledged he did not pay rent for July, August, September or October 2017, thereby receiving 3.5 months of rent-free accommodation in the unit. The landlord took no steps to recover the unpaid rent.

The tenant claimed he was entitled to rent for 12 months because he later learned the grounds for the issuance of the Two Month Notice was not correct. He testified that the landlord informed him in documents and in correspondence that the landlord “had sold” the building in which the unit was located before the Agreement was signed. However, the tenant subsequently learned the landlord did not sell the building. The tenant stated at the hearing that he now believed that the Agreement was unfair, and 12 months’ rent was reasonable monetary compensation for vacating the unit.

The landlord testified that, as mentioned earlier, there was an agreement to sell the building at the time the parties signed the Agreement. However, the landlord stated that the purchaser subsequently failed to complete the sale and the transaction did not take place.

The landlord stated that the tenant freely entered into the Agreement after considerable discussions and correspondence between the parties, that the Agreement was fair and reasonable, and the tenant is not entitled to any more compensation than the 3.5 months of rent that he has already received.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

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*.

In this case, the onus is on the tenant to prove entitlement to a claim for a monetary award. 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.

Section 44 of the *Act* states that a tenancy ends if the landlord and tenant agree. Both parties acknowledged signing the Agreement ending the tenancy in October 2017.

The tenant claims entitlement to more compensation, specifically an amount equal to rent for 12 months. The landlord denied the tenant is entitled to greater compensation. The landlord claimed multiple discussions with the tenant affirming the tenant had agreed to vacate the unit and the undertaking by the landlord not to claim for unpaid rent or to enforce an order of possession. She stated that the tenant freely entered into discussions, negotiation and signing of the Agreement. He was aware of the terms and that the Agreement was final and binding. No rent was offered by the tenant or received in the 3.5 months prior to the tenant vacating the unit. The landlord has not taken any steps to recover outstanding rent. The tenant did not claim duress or any other defence to enforcement of an agreement freely entered into. His sole reason for wanting additional compensation is that the Two Month Notice contains information which later he learned was incorrect.

I find the Agreement was freely entered into and is enforceable. I find the Agreement is fair and resulted from negotiations between competent parties. I find the tenant has failed to prove on a balance of probabilities that the Agreement should be set aside for any reason or that he is entitled to greater compensation. The tenant did not claim the landlord forced him or that he had no choice but to sign the Agreement. The tenant did not establish the landlord coerced or exploited him in any way; there is no evidence of wrong doing on the landlord's part. The primary term is that the tenant received compensation (3.5 months rent) for vacating the unit; both parties fulfilled their respective obligations under the Agreement.

Considering the testimony and the documents submitted by each of the parties, I find the tenant has failed to show that the terms of the Agreement should be set aside or that a monetary award should be made to the tenant in addition to the compensation set out in the Agreement.

The tenant provided no evidence that the named respondent HC was a landlord of the tenant's. The landlord and HC testified that HC is not a landlord. Accordingly, I dismiss the application against HC without leave to reapply.

For the reasons given, I also dismiss the tenant's claims against the landlord without leave to reapply.

Conclusion

The tenant's claims are 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: December 3, 2018

Residential Tenancy Branch