Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PROPERTY SMART MANAGEMENT and NAI COMMERCIAL (HOTEL INVESTMENT SALES)
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFT, MNDCT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on September 7, 2018 (the "Application"). The Tenant sought compensation for monetary loss or other money owed and reimbursement for the filing fee.

The Tenant appeared at the hearing. P.L. appeared for Landlord 1. S.C. appeared for Respondent 1. Nobody appeared for Landlord 2.

The Tenant originally sought $6,533.83 in compensation. The Tenant then filed an amendment to the Application seeking $29,933.93 (the "Amendment").

I asked the parties at the outset about the named Respondents. I found no issue with naming Landlord 1 as, at the relevant time, Landlord 1 was named as the landlord on the written tenancy agreement with the Tenant. I also found no issue with naming Landlord 2 as he was the owner of the rental unit at the relevant time.

In relation to Respondent 1, the Tenant said they were not acting as agents for the owner during his tenancy. S.C. said this matter has nothing to do with Respondent 1. I understood him to say there was no tenant in the rental unit when he took over acting as agent for Landlord 2. S.C. advised that he re-rented the rental unit.

The basis for the Application is the submission that Landlord 2 evicted the Tenant illegally on the basis that his daughter was moving into the rental unit and that this never happened. The Tenant sought compensation under section 51 of the *Residential Tenancy Act* (the "*Act*").

I understood the role of S.C. to be that of agent for Landlord 2 after the tenancy with the Tenant ended. I told the Tenant he needed to explain during the hearing how or why Respondent 1 should be named as a landlord in the Application. The Tenant did not make further submissions in this regard.

The definition of “landlord” in section 2 of the *Act* is as follows:

> "landlord", in relation to a rental unit, includes any of the following:
>
> (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
>
> (i) permits occupation of the rental unit under a tenancy agreement, or
>
> (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
>
> (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
>
> (c) a person, other than a tenant occupying the rental unit, who
>
> (i) is entitled to possession of the rental unit, and
>
> (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
>
> (d) a former landlord, when the context requires this;

I am not satisfied Respondent 1 was any of the above during the tenancy of the Tenant. It may be that S.C. re-rented the rental unit after the tenancy, a fact the Tenant is relying on for his Application. However, Respondent 1 is not responsible for the actions of Landlord 1 or Landlord 2 in evicting the Tenant or any actions taken during the tenancy given Respondent 1 was not involved in the tenancy or acting as agent for Landlord 2. I am not satisfied Respondent 1 should be named as a landlord or as a party to this proceeding. S.C. was present for the hearing and made submissions at the hearing and therefore I have named Respondent 1 on the front page of this decision. However, I have removed Respondent 1 from the style of cause and have not proceeded against them.

The Tenant, Landlord 1 and Respondent 1 had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

P.L. and S.C. confirmed they received the hearing package, Amendment and Tenant's evidence and raised no issues in this regard.

Nobody appeared for Landlord 2. The Tenant testified that he served the hearing package on Landlord 2 through Canada Post and provided Tracking Number 1 as noted on the front page of this decision. The Tenant testified that he sent it to an address for Landlord 2 from his 2014 tenancy agreement. The Tenant did not have any evidence that this continued to be the address of Landlord 2.

I looked Tracking Number 1 up on the Canada Post website which shows the package was delivered and signed for December 6, 2018. However, the delivery confirmation is not available online and therefore I cannot see who signed for the package.

Section 89(1) of the *Act* sets out the methods of service for an application for dispute resolution and allows for the following methods:

> …
>
> (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;

I am not satisfied that the address provided by Landlord 2 on a 2014 tenancy agreement continues to be his residence or address where he carries on business as a landlord without some evidence that he continues to be available here. The Canada Post website does not indicate who signed for the package and therefore does not satisfy me that Landlord 2 received the package. Landlord 2 did not submit evidence for this hearing which may have satisfied me that he received the hearing package. He did not appear at the hearing or send an agent to appear. There is no evidence before me that satisfies me Landlord 2 received the hearing package. Given I am not satisfied of service, I have removed Landlord 2 from the style of cause and have not proceeded against him. The name of Landlord 2 is noted on the front page of this decision for reference.

The Tenant confirmed he received Landlord 1's evidence. He did not receive the evidence submitted by Respondent 1.

S.C. testified that the evidence package was sent by ordinary mail to the Tenant in December. Respondent 1 had not submitted any evidence of service. The Tenant denied receiving this package.

Given the testimony of the Tenant that he did not receive the package, and the lack of evidence of service, I was not satisfied that the evidence was served on the Tenant in accordance with the *Act* and Rules of Procedure (the "Rules"). I heard the parties on whether the evidence should be admitted or excluded. I excluded the evidence of Respondent 1 as I found it would be unfair to the Tenant to admit it when I was not satisfied of service and the Tenant said he did not receive it.

I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered the admissible documentary evidence and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Tenant entitled to compensation for monetary loss or other money owed?

2. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

The Tenant testified that his tenancy started September 1, 2014. P.L. agreed it started in 2014 but could not recall the date. Both parties agreed Landlord 2 was the named landlord from 2014 to 2015 and thereafter Landlord 1 was the named landlord.

Two written tenancy agreements were submitted as evidence. Both are between Landlord 1 and the Tenant in relation to the rental unit. The first started September 1, 2016 and was for a fixed term ending August 31, 2017. The second started September 1, 2017 and was for a fixed term ending December 31, 2017. Rent was $1,800.00 per month due on the first day of each month.

The Tenant sought the following compensation:

1. $3,600.00 for the difference between his rent at the rental unit and current rent;
2. $2,933.93 for moving-related costs;
3. $1,800.00 pursuant to section 51(1) of the *Act* as the required one month free rent; and
4. $21,600.00 pursuant to section 51(2) of the *Act* for the Landlord not following through with the stated purpose of the eviction.

The Tenant testified that in July of 2017 he was informed his tenancy would not be extended as Landlord 2's daughter was moving into the rental unit. He said he asked the Landlords to extend the tenancy for a further four months and the Landlords agreed. The Tenant testified that he then requested a further extension of one year; however, he was told Landlord 2's daughter was moving in. The Tenant said he had to move out of the rental unit at the end of December. The Tenant submitted that he would not have incurred the costs he did if his tenancy had been renewed.

The Tenant testified that, after he moved out, he checked the rental unit online and found the rental unit listed for rent at a higher rent amount. The Tenant said he went to a showing for the rental unit and spoke to S.C. who advised that Landlord 2 was looking for a long-term tenant. The Tenant testified that he followed up with an email and received a rental application for the rental unit.

The Tenant confirmed he was never served with a notice to end tenancy on the approved form. He said he was only sent an email in relation to ending the tenancy. The Tenant relied on an email from July 26, 2017 and October 19, 2017 as the relevant emails.

The Tenant confirmed all of his claims arose out of this incident. The Tenant relied on section 51 of the *Act* as the basis for his claim. I asked the Tenant if he was relying on any other section of the *Act* and the Tenant did not point me to any other section of the *Act* he was relying on.
The Tenant submitted that I should consider all of the email correspondence when considering whether he was served with a notice under section 49 of the *Act*.

I asked the Tenant about his basis for requesting moving costs and difference in rent. He submitted that the Landlords did not extend his tenancy and this was unlawful therefore he is seeking compensation for the costs he incurred. I asked the Tenant

what the Landlords had done to breach the *Act, Regulations* and/or tenancy agreement. The Tenant was unable to point to a breach. I asked the Tenant what he was relying on for his submission that the Landlords evicted him unlawfully. He submitted that the Landlords had to ensure they made efforts to use the rental unit for the stated purpose of ending the tenancy. He testified that the Landlords did not do so as they posted the rental unit for rent five days after his tenancy ended. I read out section 51 of the *Act* for the Tenant who confirmed this is the section of the *Act* he was relying on.

P.L. was provided an opportunity to make submissions. His submissions consisted of a timeline of events which I will not outline here as I do not find the majority of it relevant to the issues before me. P.L. did note the Tenant initialled the vacate clauses in the tenancy agreements. He made no further argument about this. P.L. also mentioned he was informed July 26th of the decision not to extend the tenancy. He spoke of the extension subsequently provided. He said he told the Tenant October 19th he was not in a position to negotiate a further extension.

S.C. was provided an opportunity to make submissions. He raised the question of whether the Landlords had to provide a reason for ending the tenancy when it is a fixed term tenancy. I told S.C. the parties would need to make submissions on that if that was their position. S.C. did not make further submissions on this point. S.C. testified about the reason Landlord 2's daughter did not move into the rental unit and testified about re-renting the rental unit. S.C. challenged the amounts requested by the Tenant.

The July 26th email is from P.L. to the Tenant and states:

> Just heard back from landlord, their daughter is moving back here, so they will not be renewing at the end of the current tenancy.

The October 19th email is from P.L. to the Tenant and states:

> The landlord's daughter still at a short-term place awaiting to move back into the unit.
> They have given me notice to terminate the management contract at the end of the year as well.
>
> I'm afraid there's not much I can do to give you an extension.

I have reviewed all of the remaining admissible evidence including all emails the Tenant submitted.

Analysis

The Tenant, as applicant, has the onus to prove he is entitled to the compensation sought pursuant to rule 6.6 of the Rules.

The email confirming the end of tenancy was sent October 19, 2017. In relation to compensation under section 51 of the *Act*, it is the legislation in effect at the time the notice to end tenancy was served that applies. On October 19, 2017, section 51 of the *Act* stated:

> 51 (1) A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.
> …
>
> (2) In addition to the amount payable under subsection (1), if
>
> > (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or
> >
> > (b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,
>
> the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.
>
> [emphasis added]

At the time, section 49 of the *Act* stated as follows:

> (7) A notice under this section must comply with section 52 [form and content of notice to end tenancy].

Further, section 52 of the *Act* stated:

> 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,

…

(e) when given by a landlord, be in the approved form.

[emphasis added]

Section 44 of the *Act* set out how a tenancy ends and stated:

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 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;

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended.

[emphasis added]

The entire basis for the Tenant's claim is section 51 of the *Act*. As stated in section 51 of the *Act*, a tenant is only entitled to compensation under that section when the tenant receives a notice to end tenancy issued under section 49 of the *Act*.

I do not accept that the emails from July 26th and October 19th amount to a notice to end tenancy issued under section 49 of the *Act*. These emails do not comply with section 52 of the *Act* in form or content. This is a requirement of a notice to end tenancy issued under section 49 of the *Act*. Nor do I accept that all of the communications between the Tenant and Landlords, when taken together, amount to notice issued under section 49 of the *Act*. I do not find that the remaining emails add anything to the July 26th and October 19th emails in relation to this issue.

In my view, tenants must be issued a proper notice to end tenancy under section 49 of the *Act* to be entitled to compensation under section 51 of the *Act*. This means the notice must be in the approved form or include all of the information contained in the approved form such that it amounts to being in the approved form. This is my view as tenants are not required to move out unless their landlord has complied with the *Act* in relation to ending the tenancy.

The email correspondence here is not sufficient. The Tenant never received a notice to end tenancy issued under section 49 of the *Act*. The Tenant therefore is not entitled to compensation pursuant to section 51 of the *Act* regardless of whether Landlord 2's daughter moved into the rental unit.

I note that tenants and landlords are expected to know their rights and obligations under the *Act*. I also note that the tenancy agreement signed by the Tenant in this matter was on the RTB form and specifically stated at page 5 under "ENDING THE TENANCY":

> The landlord may end the tenancy only for the reasons and only in the manner set out in the Residential Tenancy Act and the landlord must use the approved notice to end a tenancy form available from the Residential Tenancy Office.
>
> [emphasis added]

I note that the Tenant would not have been entitled to 12 months rent even if entitled to compensation under section 51 of the *Act* as the legislative changes which came into force May 17, 2018 do not apply to notices to end tenancy issued prior to the changes coming into force.

The Tenant did not provide any further basis for the remaining compensation sought being the moving costs and difference in rent. He relied on section 51 of the *Act* for this compensation.

As already stated, the Tenant is not entitled to compensation under section 51 of the *Act* as he did not receive a notice to end tenancy issued under section 49 of the *Act*.

I also note that I would not have awarded the Tenant additional compensation as the *Act* sets out what tenants are entitled to when landlords fail to follow through with the stated purpose of a notice issued under section 49 of the *Act*. In this case that would have been two months rent.

The Tenant did not point to any other basis for his claim for moving costs and difference in rent. He did not point to any other breach of the *Act*, *Regulations* or tenancy agreement by the Landlords. It is the Tenant's onus to prove he is entitled to the compensation sought. The Tenant has not met this onus.

I note that the second tenancy agreement included a vacate clause. The agreement was signed by P.L. and the Tenant August 29, 2017. It was for a fixed term ending December 31, 2017. The vacate clause was initialed by P.L. and the Tenant. Although this was mentioned by P.L. during the hearing, none of the parties made submissions about this clause in the agreement.

The legislation in relation to vacate clauses changed as of December 11, 2017. As of this date, vacate clauses were no longer enforceable except in specific circumstances.

The Tenant did not raise the issue of the vacate clause during the hearing. The parties did not specifically refer to the vacate clause in their correspondence. Neither P.L. nor S.C. made submissions on the vacate clause. P.L. simply pointed out it was initialed by the Tenant.

The vacate clause was either enforceable or unenforceable on December 31, 2017. If it was enforceable, the Tenant would have had to vacate the rental unit pursuant to the vacate clause that he initialled. In these circumstances, the Tenant would not have been entitled to the compensation sought. If the vacate clause was unenforceable, the Tenant was not required to vacate the rental unit either pursuant to the vacate clause or pursuant to the email requests to do so. In these circumstances, the Tenant would not have been entitled to the compensation sought as he, in effect, agreed to move out when asked to do so by the Landlords.

I have not determined whether the vacate clause was enforceable or not as this issue was not the basis for the Tenant's request for compensation and the parties did not provide sufficient evidence or argument on this issue during the hearing.

In summary, the Tenant is not entitled to the compensation sought.

Given the Tenant was not successful in this application, I decline to award him reimbursement for the $100.00 filing fee.

Conclusion

The Application is dismissed without leave to re-apply.
This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: January 29, 2019

Residential Tenancy Branch