



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT FFT

Introduction

This hearing dealt with the tenant's application pursuant to section 67 of 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.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The landlord confirmed receipt of the tenant's amended dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the amended Application. All parties confirmed receipt of each other's evidentiary materials.

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

Both parties confirmed that this fixed-term tenancy agreement began on August 1, 2018, and was to end on July 31, 2019. Monthly rent was set at \$1,900.00, payable on

the first of the month. The tenant paid a security deposit of \$950.00, which has been returned to her.

The tenant was moving from out of province for a job, and the tenant made the decision to start renting the home as of August 2018 despite the fact she had sublet another place until the end of August 2018 in order to make the move less stressful. The tenant testified that she had difficulty finding rental housing, and this contributed to her decision to rent two places for August 2018. The tenant has two dogs, which she disclosed to the landlord when she had applied.

The tenant testified that on July 26, 2018 the landlord had requested information about her dogs in order to register her pets, which she provided. She received the keys from the landlord, and started the process of moving her belongings shortly thereafter.

On August 17, 2018, the tenant met somebody who informed her that they were on strata, and that her pets were not approved. The tenant testified that this was the first time she had heard of this. The tenant then contacted the landlord that same night, who told her she would contact the strata management on Monday.

The tenant testified that on Monday, August 20, 2018, the tenant was told that she would have to find new housing as the strata would not agree to change their minds. The landlord assured the tenant that she would assist her in finding new housing. The tenant then immediately started looking for new housing, and while searching online ads, had saw that the landlord had reposted the unit for rent. The landlord did not dispute that this was the case, and had done so in order to mitigate her losses.

The tenant testified that that she had done some research and discovered that the landlord could not end the tenancy without her consent. The tenant informed the landlord, who then told her on August 25, 2018 the tenancy can continue. The tenant testified that after further discussion with the landlord that she was under the impression that the tenancy would end by mutual consent of both parties as of August 31, 2018, and that the landlord would reimburse her rent for August 2018. The tenant was able to find new housing for \$1,650.00 per month, and the landlord found a new tenant.

The tenant is seeking a monetary order as follows: \$1,900.00 for a refund of the August 2018 rent, and \$4,759.49 for the losses associated with the end of this tenancy.

The landlord did not dispute any of the above facts, but disputes the tenant's monetary claim. The landlord testified that the tenant had made the decision to end the fixed-term

tenancy, and move out. The landlord testified that the tenant never gave formal, written notice to end this tenancy, nor did the landlord sign a mutual agreement to end this tenancy.

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;...

Section 45(2) deals with a Tenant's notice in the case of a fixed term tenancy:

45 (2) *A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that*

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I find that both parties had agreed to enter into a tenancy agreement that was to begin on August 1, 2018. Both parties, therefore, were bound by the rights and obligations required by this tenancy agreement and *Act*. The tenant moved out, but did so with the understanding that the landlord would reimburse her the August 2018 rent. Neither party had signed any Mutual Agreements to end tenancy, nor did the landlord issue any Notices to End Tenancy to the tenant. Furthermore the tenant did not provide sufficient evidence to support any agreement made between both parties for compensation.

Although I sympathize with the tenant, and I find that that the landlord did attempt to end this tenancy in a manner not compliant with section 44(1) of the *Act*, I find that the tenant moved out instead of disputing the matter, or giving proper notice under section 44 and 45 of the *Act* herself. I find that the tenant had agreed to end this tenancy, and did not provide sufficient evidence to support that the landlord had agreed to reimburse her rent for August 2018. I find that this tenancy ended after much confusion on part of both parties, and not solely due to the landlord's failure to comply with the *Act*. In an attempt to be accommodating, reduce her stress, and mitigate her losses, the tenant simply moved out instead of continuing the tenancy, and filing an application for dispute. I find that that the tenant's decision to end this tenancy was not done in compliance with the *Act*, and I therefore dismiss her monetary claim for losses associated with the early end of this tenancy without leave to reapply.

Section 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been "a reduction in the value of a tenancy agreement."

I find that it was undisputed by both parties that the terms of the tenancy agreement had changed from when both parties signed the agreement in July of 2018. The tenant signed the tenancy agreement with the understanding that her dogs would be allowed. I find that it was undisputed that it was made clear to the tenant that this changed shortly thereafter in August of 2018, after the tenancy had already began. After reviewing the evidence by both parties, I find that that the landlord failed to fulfil her obligations under the tenancy agreement by prematurely approving the tenant and her two dogs without first obtaining prior approval from strata council, a change in a material term which had led to the eventual confusion and early end of this tenancy. Although I find that the tenant did not end this tenancy in a manner compliant with the *Act*, I do feel that there was a reduction in the value of the tenancy agreement. I find that the landlord failed to obtain prior approval from strata before entering the tenancy agreement, or at least inform the tenant that the allowance of her two dogs were conditional. On this basis I allow the tenant a rent reduction equivalent to one month's rent as the tenant signed the tenancy agreement with the understanding that her dogs would be allowed for the duration of this tenancy, and without any issues.

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

Conclusion

I find that the tenant is entitled to a monetary order in the amount of \$1,900.00 plus half of the cost of the filing fee for this application. I issue a monetary order in the tenant's favour in the amount of \$1,950.00.

The tenant(s) 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.

The remaining portion of 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: March 12, 2019

Residential Tenancy Branch