



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord did not attend the hearing. The Tenant was given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter: Service

The Tenant states that the Landlord was served with the application for dispute resolution, notice of hearing and evidence (the “Materials”) by registered mail on March 15, 2019 to the dispute address. The Tenant states that the Landlord owns the rental unit at the dispute address and rents it to the Landlord’s son. The Tenant provides a copy of the registered mail receipt and postal tracking evidence of the Materials having been collected.

Section 89(1) of the Act provides that an application for dispute resolution must be served, inter alia, by sending a copy by registered mail, if the person is a landlord, to the address at which the person carries on business as a landlord. Section 71(2)(c) of the Act provides that the director may order that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this Act. If the rental unit is not an address where the Landlord carries on business as a landlord, given the Tenant’s undisputed evidence that the Materials were sent by registered mail to the

rental unit owned by the Landlord and in which the Landlord's son resides and given the postal evidence that the Materials were collected from the registered mail sent to that address, I find that the Landlord has been sufficiently served with the Materials.

The Tenant's application sets out a total monetary claim of \$1,000.00 as compensation, this amount calculated as also including the return of the \$100.00 filing fee paid for this dispute resolution. The application sets out that the compensation sought is for the Landlord's breach of a settlement agreement between the Parties. The Tenant also provided as evidence three monetary order worksheets. The Tenant confirms that these worksheets are for the amounts of \$450.00 as the return of double the security deposit, \$500.00 for aggravated damages, and \$977.35 for costs associated with being locked out of the unit. The Tenant did not amend its application to include these claims.

Rule 2.2 of the Residential Tenancy Branch Rules of Procedure provides that claims are limited to what is stated in the application. As the Tenant did not make an amendment to the application to increase the monetary claim beyond \$1,000.00 inclusive of the filing fee, I find that the Tenant's total claims are restricted to this amount. Further, as the Tenant did not amend the application to include the claims for return of the security deposit, for aggravated damages, or for being locked out of the unit, I find that the Tenant's claim is limited to the claim in relation to a breach of a mutual agreement.

Issue(s) to be Decided

Does the Act apply to the dispute?

Background and Evidence

The Tenant was not provided with any written tenancy agreement. The Tenant entered into an oral agreement with the Landlord to rent a shared unit that was occupied by two other persons, one of whom was the Landlord's son, starting in May 2017. The Tenant paid the Landlord a security deposit of \$225.00 and paid rent of \$450.00 per month

directly to the Landlord. The third person in the rental unit also had a separate agreement with the Landlord to pay \$450.00 per month.

The Tenant states that on November 30, 2017 the Tenant was locked out of the unit by the Landlord. The Tenant states that it made an application for dispute resolution as a result of being locked out claiming \$250.00 for return of the security deposit, \$1,200.00 in compensation for loss of occupancy of the rental unit, and an order for the return of personal property or if not returned, compensation of \$4,875.00. The Tenant states that prior to the hearing on its application the Parties entered into a mutual agreement to settle the dispute and the Landlord agreed to pay the Tenant \$1,000.00 in monthly installments of \$50.00. The Tenant states that help for this mutual agreement was provided by a law student's clinic. The Tenant states that as a result of the mutual agreement the Tenant cancelled the hearing on its application. The Tenant provides a copy of the mutual agreement signed by the Landlord on July 17, 2018. The Tenant states that the Landlord only paid \$100.00 out of the \$1,000.00 agreed upon.

Analysis

Section 2(1) of the Act provides that the Act applies to tenancy agreements, rental units and other residential property. Section 6(2) of the Act provides that landlord or tenant may make an application for dispute resolution if the landlord and tenant cannot resolve a dispute referred to in section 58 (1). Section 58(1) of the Act provides that except as restricted under this Act, a person may make an application for dispute resolution in relation to a dispute with the person's landlord or tenant in respect of any of the following:

- (a) rights, obligations and prohibitions under this Act;
- (b) rights and obligations under the terms of a tenancy agreement that
 - (i) are required or prohibited under this Act, or
 - (ii) relate to
 - (A) the tenant's use, occupation or maintenance of the rental unit, or
 - (B) the use of common areas or services or facilities.

Section 63(2) of the Act provides that if parties settle their dispute during dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. If a settlement is reached during the proceedings and a decision or order is issued then the breach of that order or decision may be resolved under the Act through the dispute resolution proceedings. However there is nothing in the Act that provides for the resolution of a dispute in relation to a breach of a mutual agreement for compensation made outside the dispute resolution proceedings. I therefore dismiss the Tenant's application.

The Tenant may be able to pursue the enforcement of the mutual agreement at the small claims court. Alternatively as the Tenant cancelled its original application for dispute resolution to the Residential Tenancy Branch (the "RTB") I consider that the dispute has never been resolved through the dispute resolution proceedings provided under the Act, that there is no final and binding decision or order issued on the matters of the original claims, and that the Tenant is therefore still at liberty to make an application seeking dispute resolution of its original claims, within the time limit allowed under the Act.

Conclusion

The application is dismissed. This decision is made on authority delegated to me by the Director of the RTB under Section 9.1(1) of the Act.

Dated: May 09, 2019

Residential Tenancy Branch