



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HAVEN PROPERTIES and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, OLC, FFT

Introduction

This hearing originally convened on April 11, 2019 and was adjourned to May 30, 2019 as both parties requested time outside the confines of the hearing to engage in settlement discussions. Those settlement discussions were unsuccessful. This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67;
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The tenants, the landlord's property manager and the president of the property management company attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenants testified, and the landlord's property manager confirmed that the tenants served the landlord with their notice of dispute resolution application. I find that the landlord was served with the required documents in accordance with the *Act*.

Issues to be Decided

1. Are the tenants entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
2. Are the tenants entitled to an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62 of the *Act*?

3. Are the tenants entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on February 15, 2019 and is currently ongoing. This is a one year fixed term tenancy agreement. Monthly rent in the amount of \$1,250.00 is payable on the first day of each month. A security deposit of \$625.00 was paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application. The subject rental property is an apartment in a strata apartment building.

The tenants testified that on February 18 or 19, 2019 the property manager e-mailed them and informed them that the strata had not approved the subject rental property as a rental unit and that the tenants would have to move out. The tenants entered into evidence an e-mail from the property manager dated February 25, 2019 which states:

What type of formal notice? The tenancy is not being allowed by Strata, not me. I just have to go along with what Strata decides.

If you want something from me.

This is too [sic] formally notify you and [tenant H.I.] that [the Strata Corporation] will not allow the tenancy located at [address of subject rental property] to continue.

Both parties agreed that the landlord did not serve the tenants with a Notice to End Tenancy on a Residential Tenancy Branch Form.

The property manger president testified that only eight units in the building are allowed to be rented out at one time and that prior to the tenants moving in, the strata building already had eight units rented out.

The tenants testified that they should not have to move out of the subject rental property and incur added stress and expenses for moving because the landlord failed to do his due diligence by enquiring with strata as to whether he was permitted to rent the subject rental property.

At the beginning of the reconvened hearing, the landlord's property manager testified that the landlord is no longer seeking to have the tenants move out and is working with the strata to allow the tenancy to continue.

The tenants testified that they are seeking \$15,000.00 (one year's rent) from the landlord for all of the stress the landlord put the tenants through since they moved in as they were not sure if the tenancy would continue.

The tenants testified that they are seeking the landlord to comply with the terms of the one-year lease and to not end their tenancy prematurely.

Analysis

Section 44 of the *Act* states how tenancies may end:

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, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;

(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;
- (g)the tenancy agreement is a sublease agreement.

(2)[Repealed 2003-81-37.]

(3)If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

I find that the landlord did not end the tenancy in accordance with section 44 of the *Act*. I find that the e-mail dated February 25, 2019 has no legal authority to evict the tenants. I find that if the landlord breached any strata bylaws by renting out the subject rental property, the landlord and not the tenants must bear those consequences. I find that the landlord through his property manager breached s. 44 of the *Act* by purporting to end the tenancy based on strata bylaws.

Pursuant to section 62 of the *Act* I Order the landlord to comply with section 44 of the *Act*.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I find that while the landlord breached section 44 of the *Act*, I find that the tenants have failed to prove that a significant loss has resulted from this non-compliance.

Nonetheless, I find that the tenants have proven that they have suffered stress resulting from the actions of the landlord.

Policy Guideline 16 states that nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right. I find that the tenants are entitled to nominal damages in the amount of \$500.00.

As the tenants were successful in their application I find that they are entitled to recover the \$100.00 filing fee from the landlords, in accordance with section 72 of the *Act*.

Section 72(2) states that if the director orders a landlord to make a payment to the tenant, the amount may be deducted from any rent due to the landlord. I find that the tenants are entitled to deduct \$600.00, on one occasion, from rent due to the landlord.

Conclusion

Pursuant to section 62, I Order the landlord to comply with section 44 of the *Act*.

I Order that the tenants are entitled to deduct \$600.00, on one occasion, from rent due to the landlord.

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: May 30, 2019

Residential Tenancy Branch