



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) for monetary compensation and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The Tenant and Landlord were both present for the teleconference hearing. The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenant’s evidence. The Tenant confirmed receipt of a copy of the Landlord’s evidence. Neither party brought up any issues regarding service.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

Issues to be Decided

Is the Tenant entitled to monetary compensation?

Should the Tenant be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The Tenant stated that the tenancy started around December 2018, while the Landlord testified that it started on October 1 or October 15, 2018. The parties were in agreement

as to the other tenancy details. The tenancy ended on April 1, 2019. Monthly rent was \$900.00 and a security deposit of \$450.00 has been returned to the Tenant.

The Tenant has applied for compensation in the amount of \$10,800.00 which he stated is the equivalent to 12 months compensation due to the Landlord not using the rental unit for the stated purpose of the eviction.

The Tenant confirmed that he did not receive an official eviction notice, but instead that he received a text message on or around February 24, 2019. He submitted that he was on vacation at the time so deleted the text which said that the Landlord intended to move into the rental unit on April 1, 2019.

The Tenant testified that he forgot about the text message as he figured he would hear from the Landlord when he got home such as through service of a notice to end tenancy. However, he stated that he heard nothing further until March 31, 2019 when the Landlord called and asked to look around the rental unit. When she came by, the Tenant stated that she expressed confusion as to why he hadn't packed which he thought was a joke. When he realized that the Landlord wanted him to move, he stated that he felt very threatened and called the police. The Tenant stated that due to threats from the Landlord he was unable to stay in the rental unit and moved out the following day on April 1, 2019.

The Tenant submitted a letter from the police dated May 22, 2019 in which the police confirm they attended after receiving a call from the Tenant and that as no criminal offenses occurred, the file was concluded.

The Tenant also submitted a copy of text messages with the Landlord dated March 31, 2019 in which the parties discuss the Tenant vacating the unit. In the text messages the Landlord states that she needs the Tenant to move out by April 7, 2019 at the latest as that is when she is moving her belongings into the rental unit. She also notes that new tenants are moving into the upstairs unit of the home on April 15, 2019. In text messages from April 1, 2019, the Tenant states that he will be out right away if he gets his security deposit back, otherwise he will stay.

The Tenant testified as to hardships he faced after moving out and stated that this would not have occurred if not for the Landlord evicted him through a text message.

The Landlord stated that she was not aware of a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice"). As this was a verbal month-to-

month tenancy agreement, the Landlord stated her understanding that she could provide a month notice to end the tenancy. She confirmed that she sent a text message to the Tenant on or around February 24, 2019 for him to move out by April 1, 2019. She stated that she planned to move into the downstairs rental unit and rent out the upstairs part of the home as it made more financial sense for her at the time.

The Landlord testified that she went to the rental unit on March 31, 2019 to confirm that the Tenant was in the process of moving out. Due to the dispute with the Tenant at the time and the involvement of the police, the Landlord stated that she called the Residential Tenancy Branch on April 1, 2019 and was advised that she needed to serve a Two Month Notice to the Tenant. The Landlord testified that she began making arrangements to stay elsewhere for two months so the Tenant could stay during this time until the effective end of tenancy date of a Two Month Notice. She stated that she had plans to pick up the Two Month Notice the following day to serve to the Tenant but did not do so as the Tenant moved out on April 1, 2019.

The Landlord also submitted copies of text messages into evidence including a copy of the original text message that the Tenant was to move out by April 1, 2019. The Landlord stated that she advised the Tenant that he could stay once she learned of the proper eviction process, but that it was his choice to move out right away.

Analysis

The Tenant applied for 12 months of rent compensation pursuant to Section 51 of the *Act*. However, I note that Section 51 of the *Act* only applies after a Two Month Notice is served if there is reason to believe that the landlord did not use the rental unit for the purpose as stated on the Two Month Notice.

As both parties confirmed that no Two Month Notice was served in this matter, I find that Section 51 of the *Act* does not apply. However, I will also consider whether the Tenant is entitled to compensation equivalent to \$10,800.00 as claimed. Regarding a claim for compensation, Section 7 of the *Act* states the following:

- 7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or

their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Policy Guideline 16: Compensation for Damage or Loss provides further clarification to determine if a party is entitled to monetary compensation through a four-part test as follows:

- 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.

While I do find that a text message is not a way to end the tenancy under the *Act*, I also note that since the tenancy was not ended in accordance with the *Act*, the Tenant did not have to move out and the tenancy did not have to end. Both parties have a duty to know their rights and responsibilities under the *Act* and in this matter, I find that both parties have some responsibility in this. The Landlord had a responsibility to know how to legally end the tenancy for landlord's use of property and the Tenant had a responsibility to know that he did not have to move out based on a text message or verbal notice to move out from the Landlord.

As such, I find that the Tenant has not established that he is entitled to compensation. I do not find any evidence before me that the Tenant was evicted and had to move. Instead, although it was clear that there was poor communication between the parties which seemed to result in misunderstandings from both sides, I do find evidence of a notice to end the tenancy in accordance with the *Act*. Instead, I find that the Landlord did not legally end the tenancy and therefore the tenancy only ended when the Tenant chose to move out.

Therefore, I am not satisfied that the Tenant has proven that he experienced a loss due to the Landlord's breach of the *Act* and that he took reasonable steps to mitigate his losses. Had the parties not been able to resolve the dispute on their own, they had the option of applying for dispute resolution. Instead, I find that the Tenant moved out on his own accord when he had the right under the *Act* to continue the tenancy until it was ended in accordance with the *Act*.

I also note that as stated in the four-part test, a party claiming compensation must also establish the value of their loss. While the Tenant may have experienced some hardship due to the communication from the Landlord regarding her desire to end the tenancy, I do not have sufficient evidence before me to establish that he experienced a loss valued at \$10,800.00, which is more than what he paid in rent throughout the duration of the tenancy.

I decline to award any compensation to the Tenant. As the Tenant was not successful, I also decline to award the recovery of the filing fee. The application is dismissed, without leave to reapply.

Conclusion

The Application for Dispute Resolution 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: July 24, 2019

Residential Tenancy Branch