



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL – 4M OLC PSF FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 4 Month Notice to End Tenancy for Demolition, Renovation, or Conversion to Another Use ("4 Month Notices"), pursuant to section 49;
- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*; *and*
- an order to the landlord to provide services or facilities required by law pursuant to section 65.

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

The landlord confirmed receipt of the tenant's amended application and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with the tenant's application and evidence. The landlord did not submit any written evidence for this hearing.

The tenant confirmed that she had moved out on May 31, 2019. Accordingly, the non-monetary portions of the tenant's application are cancelled as the tenancy had ended.

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

This tenancy began on April 1, 2018 on a month-to-month basis. The tenant paid the landlord monthly rent in the amount of \$1,450.00. The landlord collected, and returned to the tenant, a security deposit in the amount of \$725.00.

The tenant testified that she was verbally informed by the landlord that she must move out in four months, by August 1, 2019. Both parties confirmed that the tenant was never given any written notices to end tenancy, and that she had moved out on May 31, 2019. The tenant testified that the landlord had informed her that she would receive 1 month's rent in compensation, which she never received. The tenant testified that although she was originally given until August 1, 2019 to move out, she was informed on May 24, 2019 that she had to be out by May 31, 2019. The tenant testified that she had called the property manager, who informed her that her landlord had given notice to the owner of the home that he would move out on June 1, 2019, and as the original agreement was between her landlord and the owner of the home, that this agreement would apply to her as well.

As the tenant had to move out on such short notice, the tenant is applying for compensation for her moving and storing costs, as well as the 1 month's rent for May 2019 as follows:

1 Month's Rent	\$1,450.00
Storage Costs	172.75
Moving Truck	76.91
Filing Fee	100.00
Total Monetary Award Requested	\$1,799.66

The landlord is disputing the tenant's monetary claim. The landlord testified that he had given verbal notice to the tenant on April 2, 2019, and not in May of 2019. The landlord testified that the tenant had agreed to move out, and not on the basis of any written notices to end tenancy.

Analysis

Section 49 of the *Act* allows for the landlord to issue a Notice to end the tenancy for landlord's use, and states the following:

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

(8) A tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice.

(9) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

Section 52 of the *Act* requires that the above Notice complies with the *Act*, specifically, that the Notice 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) state the grounds for ending the tenancy, and (e) be in the approved form.

Although the landlord communicated to the tenant that the tenant must move out, I find that no notices to end tenancy were issued to the tenant that complies with section 52(e) of the *Act*. The tenant applied for compensation pursuant to section 51 below, which requires that a notice be given under section 49 of the *Act*.

Tenant's compensation: section 49 notice

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.*

(1.1) *A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.*

(1.2) *If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.*

(2) *Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if*

(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or

(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

I find that the tenant moved out as requested by the landlord, and not as a result of receiving a Notice to End Tenancy pursuant to Section 49 of the *Act*. I find that although the tenant did originally apply to dispute the notice given by the landlord, the tenant moved out on May 31, 2019 before the hearing was held. On this basis, I am not allowing the tenant's application for monetary compensation pursuant to section 51 of the *Act* as the tenant agreed to vacate the rental suite and moved out as requested by the landlord, and not on the basis of a Notice given under section 49 of the *Act*.

The tenant also applied for compensation for her moving and storage costs.

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

Liability for not complying with this Act or a tenancy agreement

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.

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenant bears the burden of establishing their claim on the balance of probabilities. The tenant must prove the existence of the loss, and that it stemmed directly

from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the tenant must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenant must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

I find that the tenant failed to provide sufficient evidence to support that her losses were directly due to the landlord's failure to comply with the *Act* and tenancy agreement. As stated above, I find that the tenant had moved out as requested by the landlord. Although the tenant had applied to dispute the notice given to her by the landlord, the tenant had moved out before a hearing was held and a decision was made by an Arbitrator. On this basis, the tenant's monetary claims for moving and storage costs are dismissed without leave to reapply.

As the filing fee is normally awarded to the successful party after a hearing, I dismiss the tenant's application to recover the filing fee.

Conclusion

As this tenancy ended on May 31, 2019, the non-monetary portion of the tenant's application was cancelled.

The tenant's monetary claims are 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: August 6, 2019

Residential Tenancy Branch