



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT MNDCT

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67 of the *Act*, and
- recovery of the filing fee for this application from the landlord pursuant to section 72 of the *Act*.

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

As both parties were present, service of documents was confirmed. The landlord confirmed receipt of the tenant's Notice of Dispute Resolution Proceeding package and evidence, and the tenant confirmed receipt of the landlord's evidence. As such, based on the testimony of both parties, I find that the documents for this hearing were served in accordance with the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a monetary award as compensation for damage or loss?
Is the tenant entitled to recover the cost of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

The parties confirmed that the tenant had resided in the rental unit since January 30, 2016 and there had been successive fixed term tenancy agreements between the parties. A copy of the last written tenancy agreement which was the subject of this dispute was submitted into evidence, with both parties confirming the terms of the tenancy as follows:

- The tenancy agreement began February 1, 2018 as a fixed term tenancy scheduled to end on July 31, 2018.
- The tenancy agreement included a vacate clause in accordance with section 13.1 of the *Residential Tenancy Regulations*. Both parties submitted their own copies of the tenancy agreement, and while the tenant's copy only had the tenant's initials in the box confirming her understanding of the applicability of the vacate clause to the tenancy agreement, the landlord's copy had both parties' initials in the box. As such, I find that although on separate copies, both parties had initialled the box next to the vacate clause to indicate their understanding and acceptance of that term of the tenancy agreement.
- Monthly rent at the end of the tenancy was \$988.00 payable on the 1st day of the month.
- The tenant paid a security deposit of \$460.00 and a pet damage deposit of \$230.00 at the beginning of the tenancy, however, the tenant had requested to apply her deposits towards her last month's rent of June 2018. Therefore, the landlord no longer holds these deposits.

The tenant confirmed that she gave notice to the landlord to end her tenancy before the end of the fixed term. The tenant explained that as she knew her tenancy was coming to the end of the term and she would have to move out, she was concerned she would have difficulty finding another place to live due to the fact she has a dog. As such, she took the first rental she found that would allow a dog. Therefore, the parties confirmed that the tenancy ended on June 30, 2018 when the tenant vacated the rental unit and returned possession to the landlord.

The tenant confirmed that she did not receive a notice to end tenancy from the landlord and she never filed an application to dispute the end of the tenancy due to the vacate clause.

The tenant testified that the landlord's close family member never moved into the rental unit, contrary to the vacate clause, and that the landlord re-rented the rental unit to a friend.

The tenant sought monetary compensation of \$1,976.00 representing two months of rent.

The landlord testified that at the time they signed the fixed term tenancy, the daughter of the landlord's spouse was going to move into the rental unit. However, the daughter became pregnant and decided she required a larger unit instead of the landlord's rental unit. The landlord testified that the tenant had issues with the rental building's strata council and had expressed that she wished to move out. The landlord stated the tenant did not provide a full month's notice to end the tenancy and end the fixed term tenancy early.

Analysis

In a claim for damage or loss under section 67 of the *Act*, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove all four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met all of these four elements, the burden of proof has not been met and the claim fails.

In this case, it is the tenant who bears the burden of proof to prove their claim, on a balance of probabilities.

Section 13.1 of the *Residential Tenancy Regulations* sets out the circumstances for when a tenant must vacate at end of a fixed term tenancy, as follows:

13.1 (1) In this section, "close family member" has the same meaning as in section 49 (1) of the *Act*.

- (2) For the purposes of section 97 (2) (a.1) of the *Act* [*prescribing circumstances when landlord may include term requiring tenant to vacate*], the circumstances in which a landlord may include in a fixed term tenancy agreement a requirement that the tenant vacate a rental unit at the end of the term are that
- (a) the landlord is an individual, and
 - (b) that landlord or a close family member of that landlord intends in good faith at the time of entering into the tenancy agreement to occupy the rental unit at the end of the term.

This is further explained in Residential Tenancy Policy Guideline #30: Fixed Term Tenancies, which states, in part, as follows:

Requirement to Vacate

A vacate clause is a clause that a landlord can include in a fixed term tenancy agreement requiring a tenant to vacate the rental unit at the end of the fixed term in the following circumstances:

- the landlord is an individual, and that landlord or a close family member of that landlord intends in good faith at the time of entering into the tenancy agreement to occupy the rental unit at the end of the term.
- the tenancy agreement is a sublease agreement

...

The reason for including a vacate clause must be indicated on the tenancy agreement and both parties must have their initials next to this term for it to be enforceable. The tenant must move out on the date the tenancy ends. The

landlord does not need to give a notice to end tenancy or pay compensation as required when ending a tenancy under section 49.

Residential Tenancy Policy Guideline #50. Compensation for Ending a Tenancy explains that there is no compensation provided for a fixed term tenancy agreement which includes a vacate clause, as follows:

E. VACATE CLAUSES

There are no notice, compensation and minimum occupancy requirements if a fixed term tenancy agreement includes a vacate clause. Vacate clauses are only allowed in limited circumstances.

I find that the tenant failed to provide sufficient evidence to dispute the landlord's good faith intention, at the time of entering into the tenancy agreement, to occupy, or have a close family member occupy, the rental unit at the end of the term.

I find that the parties had initialled beside the vacate clause on their own copies of the tenancy agreement, and as such, I do not assess any weight to the tenant's claim that her copy of the tenancy required the landlord's initials to validate the vacate clause.

I find that the Act does not require any compensation to be paid if a fixed term tenancy agreement includes a vacate clause.

Further, I find that the tenant gave notice and ended the fixed term tenancy early.

Therefore, after consideration of the testimony and evidence before me, on a balance of probabilities, I find the tenant failed to meet the burden of proof to demonstrate that the landlord contravened the *Act*, which is a required element to succeed in a claim for compensation under the *Act*.

As such, I find that the tenant's Application for monetary compensation in the amount of \$1,976.00 must be dismissed.

As the tenant was unsuccessful in this Application, the tenant must bear the costs of the filing fee.

Conclusion

The tenant's application is dismissed in its entirety.

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: December 06, 2019

Residential Tenancy Branch