



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kahn Investments Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MND, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for unpaid rent and for other money owed, and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The tenant stated they did not receive the landlord's Application for Dispute Resolution and Notice of Hearing; however, they found out about this hearing through the automatic email received from the Residential Tenancy Branch and is prepared to proceed.

The landlord confirmed they received evidence from the tenant.

Procedural matter

It should be noted on the record that the landlord was upset, aggressive, displayed poor behaviour and called myself the Arbitrator a "Fucken Bitch" at the hearing. I cautioned the landlord that such behaviour is not acceptable.

Issue to be Decided

Is the landlord entitled to unpaid rent and other money owed?

Background and Evidence

The landlord testified that the tenant entered into an Application for Tenancy (the "Application"), which has the following term.

"If this offer is accepted and the Applicant fails to sign the Landlord's Residential Tenancy Agreement, or to take possession of the rental unit the Applicant will be liable for the payment of equivalent of up to one month's rent to the landlord and any related expenses incurred by the Landlord"

[Reproduced as written.]

The landlord testified that the tenant's Application was accepted; however, the tenant informed them that they would not be entering in to the tenancy agreement. The landlord stated that they received a partially completed tenancy agreement as the tenant had initial some clauses.

The tenant testified that the Application is not a tenancy agreement and cannot be enforced. The tenant stated that the terms of the tenancy were not fully negotiated and when they were reviewing the tenancy agreement the landlord had added clauses, such as they had to provide a certification from a veterinarian that their dog was on a flea program, they had to have a two million insurance policy, they wanted an occupancy rent and the tenancy was a two year fixed term agreement.

The tenant testified that they did initial some sections of the tenancy agreement when they were reviewing the document; however, they did not sign the tenancy agreement as they did not agree with the terms and the landlord was informed within 24 hours of them submitting their Application, that they no longer wanted to rent the unit.

The landlord argued that the tenant was fully made aware of the terms of the Application and the tenancy agreement. The landlord stated that the text messages submitted as evidence, supports that the tenant was going to enter into the tenancy agreement. The landlord seeks to recover the equivalent of one months rent of \$2,000.00, advertising cost of \$75.60 and the \$100 filing fee.

The landlord argued that when they took the tenant's Application, they turned away other potential renters.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In this case the Application for Tenancy has a clause that states,

“If this offer is accepted and the Applicant fails to sign the Landlord’s Residential Tenancy Agreement, or to take possession of the rental unit the Applicant will be liable for the payment of equivalent of up to one month’s rent to the landlord and any related expenses incurred by the Landlord”.

[My Emphasis added.]

I find the above term to be unconscionable and has no force or effect for the following reasons.

The Application is not a signed tenancy agreement, and the terms of the tenancy agreement are not in the Application and were still being considered by the tenant.

Section 16 of the Act states, the rights and obligation of a landlord and tenant only come into effect from when the tenancy agreement was entered into; not when the Application is accepted.

Simply because a landlord accepts a person as a potential tenant in the application process, they cannot make the applicant liable for any loss under the Act, as they have not entered into a tenancy agreement as required by section 13 of the Act.

Further, section 15 of the Act states, a landlord cannot charge a person anything for accepting the person as a tenant. I find this would include any liability for a person not entering into a tenancy agreement. I find this clause is punitive and has the same effect as if it was a prohibited fee.

Furthermore, the landlord is in the business of renting. If the landlord chooses to stop accepting or processing other potential applicants, and not establishing any type of waiting list, that is their own business choice and any loss is through their own actions.

Based on the above, I find the landlord has not proven a violation of the Act by the tenant. Therefore, I dismiss the landlord's application without leave to reapply.

Conclusion

The landlord's application is dismissed.

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: April 03, 2020

Residential Tenancy Branch