



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

On March 21, 2020, the Tenants made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenants attended the hearing. E.D., M.S., and R.L. attended the hearing as well. M.S. attended the hearing as an agent for the Landlord and indicated that E.D. was also an agent for the owner of the property, but she could be named as the Respondent and representative of the owner because she met the definition of Landlord pursuant to the *Act*. However, R.L. was simply assisting E.D. for a finite period of time and is not a Landlord by definition. As such, the style of cause was amended to remove R.L. as a Respondent. The Tenants, E.D., and R.L. all provided a solemn affirmation.

The Tenants advised that the Notice of Hearing package was served to the Landlord by registered mail on March 28, 2020 and M.S. confirmed that the Landlord received this package. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord has been served with the Notice of Hearing package.

Section 59(2) of the *Act* requires the party making the Application to detail the full particulars of the dispute. During the hearing, the Tenants were asked to outline their requests for monetary compensation totaling the \$30,000.00 that they were seeking, and more specifically, the claim for \$27,671.50. However, they were unable to provide a detailed breakdown summarizing their claims for this amount, nor did they provide one to the Landlord. Moreover, it was not clear to me what the Tenants were specifically claiming for.

M.S. acknowledged that the Tenants' claims were not clearly outlined. Furthermore, he made reference to an Affidavit and a Mutual Agreement to End a Tenancy, provided by E.D., and he submitted that E.D. and the Tenants had a verbal agreement that any future claims related to this tenancy would not be pursued. He also indicated that the wording on the Mutual Agreement to End a Tenancy further cements their agreement that monetary claims after the Tenants had given up vacant possession of the rental unit would not be pursued. Based on this, and the fact that the Tenants had not set out their claims, his position is that the Tenants' Application should be dismissed in its entirety.

The Tenants refuted that they ever had such a verbal agreement with the Landlord. Furthermore, their position is that the Mutual Agreement to End a Tenancy does not constitute a written agreement that prohibited either party from making claims against each other.

When reviewing the evidence before me, clearly there is no consistent evidence that any such verbal agreement existed. Furthermore, while M.S. relies on the wording on the Mutual Agreement to End a Tenancy to support the Landlord's position that there was a written agreement that claims could not be pursued by either party, I find it important to note that the form states that "By signing this form, it means that you understand and agree that your tenancy will end with no further obligations between you and the other party." As this form is used to end a tenancy by mutual agreement, I do not find that this statement would, in any way without further specific explanation, have any bearing on any financial restitution claims.

Moreover, I do not find that the statement on the form that "If you are a tenant, this may mean that you are foregoing any right to compensation that may have been available to you if you were to be served with a notice to end tenancy" to support the position that this is in any way a written agreement that prohibits claims to be made against either party. Clearly this sentence states, "if you were to be served with a notice to end tenancy", and there is no evidence before me that a notice to end tenancy had been served. Furthermore, this statement is more likely in reference to the compensatory requirements a tenant is entitled to when served a Two Month Notice to End Tenancy for Landlord's Use of Property and is a caution that by signing a Mutual Agreement to End a Tenancy form after receiving a Two Month Notice to End Tenancy for Landlord's Use of Property, this may rescind that right to compensation. I also find it important to note that it is clearly stated on this Mutual Agreement to End a Tenancy form that this is not a notice to end tenancy. As such, I am not satisfied that there was any such verbal

or written agreement that future remedies under the *Act* cannot be sought by the parties.

With respect to M.S.'s position that the Tenants' Application should be dismissed without leave to reapply, as I have not heard any submissions with respect to the Tenants' specific claims, as I do not find that the Tenants have made it abundantly clear to any party that they are certain of the exact amounts they believe are owed by the Landlord, and as I am not satisfied that the Tenants outlined their claims precisely, with clarity, I do not find that the Tenants have adequately established a claim for a Monetary Order pursuant to Section 59(2) of the *Act*. As Section 59(5) allows me to dismiss this Application because the full particulars are not outlined, for the stated reasons above, I dismiss the Tenants' Application with leave to reapply.

As the Tenants were unsuccessful in their Application, I find that the Tenants are not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

I dismiss the Tenants' Application for Dispute Resolution with 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: May 4, 2020

Residential Tenancy Branch