



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- a monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement under section 51(2);
- a monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation (Regulation) or tenancy agreement, pursuant to section 67;
- an authorization to recover the filing fee for this application, under section 72.

Both parties attended the hearing. The landlords were represented by agent JC. The tenant was assisted by advocates OL and SS. All 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 was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

Issues to be Decided

Is the tenant entitled to:

1. a monetary order under section 51(2) of the Act?
2. a monetary order for loss?
3. an authorization to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the parties, not all details of the submission and arguments are reproduced here. The relevant and

important aspects of the tenant's claims and my findings are set out below. I explained rule 7.4 to the parties; it is the tenant's obligation to present the evidence to substantiate his application.

Both parties agreed the tenancy started on October 01, 2016 and ended September 30, 2020. Monthly rent at the end of the tenancy was \$1,350.00, due on the first day of the month. The landlord returned the security deposit of \$700.00 collected at the outset of the tenancy. Two tenancy agreements were submitted into evidence.

The first tenancy agreement, signed on September 07, 2016, was for a fixed-term tenancy from October 01, 2016 to September 30, 2017. The second tenancy agreement, signed on August 26, 2019, was for a fixed-term tenancy from October 01, 2019 to September 30, 2020. Both parties signed the clause about vacating the rental unit when the tenancy ends:

It is understood that the tenancy ends at the expiry of the fixed term and the tenant must vacate the premises. This requirement is only permitted in circumstances prescribed by the Residential Tenancy Regulations.

Reason Tenant must vacate: Landlord use of property

The tenant must move out on or before the last day of the tenancy.

Both parties agreed a 2 month Notice to End Tenancy for Landlord's use was not served.

The tenant is seeking for a compensation in the amount of \$16,200.00 (12 times the monthly rent of \$1,350.00). The tenant affirmed the landlord asked him to move out of the rental unit at the end of the fixed-term tenancy because the landlord will occupy the rental unit. The rental unit was sold on November 29, 2020.

The tenant is seeking for a compensation in the amount of \$1,800.00 for moving expenses. The tenant incurred expenses of \$124.05 to rent a moving truck, \$364.48 for a storage unit, two medical bills in the amount of \$175.00 and \$185.00 and two days of the tenant's income in the amount of \$707.20. The tenant affirmed he could not work for two days in order to move, during the move his mother suffered an accident and the tenant paid for the two medical bills, the tenant needed to rent a moving van and pay for temporary storage.

The tenant stated he was forced to sign new tenancy agreements every year and the landlord did not authorize him to have a periodic tenancy. The landlord affirmed the tenant signed new tenancy agreements because he wanted, the tenant was aware this

was a fixed-term tenancy and the tenant had to vacate the rental unit at the end of the fixed-term tenancy.

Analysis

Sections 7 and 67 of the Act state:

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.

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- 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.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Compensation under section 51(2) of the Act

Based on both parties testimony and the tenancy agreement dated August 26, 2019, I find the parties had a fixed-term tenancy agreement ending on September 30, 2020, per section 13(2)(f)(iii) of the Act. The tenant agreed the landlord would use the rental unit when the tenancy ends, per section 13.1(2) of the Regulation.

Section 44(1)(b) of the Act states a tenancy can end when a fixed-term agreement requires the tenant to vacate the rental unit at the end of the term:

A tenancy ends only if one or more of the following applies:

[...]

b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97(2)(a.1), requires the tenant to vacate the rental unit at the end of the term.

Sections 49(2) and (3) of the Act state the landlord may end a tenancy if he plans to occupy the rental unit:

(2) Subject to section 51 [tenant's compensation: section 49 notice], a landlord may end a tenancy

(a) for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be

- (i) not earlier than 2 months after the date the tenant receives the notice,
- (ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
- (iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Residential Tenancy Branch Policy Guideline 30 and 50 states a notice under section 49 is not necessary to end a fixed-term tenancy:

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. (PG30)

There are no notice, compensation and minimum occupancy requirements if a fixed term tenancy agreement includes a vacate clause. (PG50)

The tenant did not receive a 2 month notice to end tenancy under for landlord's use of the property under section 49 of the Act, namely RTB form 37.

Section 52 of the Act states the requirements for a notice to end tenancy:

- In order to be effective, a notice to end a tenancy 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) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,
- (d.1) for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and
- (e) when given by a landlord, be in the approved form.

As the tenant did not receive a valid 2 month notice to end tenancy for landlord's use of the property under section 49 of the Act that complies with section 52 of the Act and the fixed-term tenancy had a vacate clause, I find the landlord has not breached section 49 of the Act. Thus, the tenant is not entitled to the compensation he is seeking.

Moving expenses

The tenant voluntarily moved out of the rental unit at the end of a fixed-term tenancy agreement. The tenant's moving expenses are not related to the landlord not complying with the Act.

Thus, I dismiss the tenant's application for a monetary award for moving expenses.

For the purpose of educating the landlord, I note that pursuant to section 44(3) of the Act, when a fixed-term tenancy ends it is automatically renewed as a periodic tenancy. The landlord can not ask the tenant to enter a new fixed-term tenancy agreement.

As the tenant was not success with his application, pursuant to section 72 of the Act, he must bear the cost of the filing fee.

Conclusion

I dismiss the tenant's application 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: February 17, 2021

Residential Tenancy Branch