



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC FFT

This hearing dealt with the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act), for a monetary claim of \$2,874.00 related to a 4 Month Notice to End Tenancy for Demolition of Rental Unit dated September 18, 2020 (4 Month Notice).

The tenant and the landlord attended the teleconference hearing. The parties provided affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing and make submissions to me. Only the relevant evidence related to the matters before me is mentioned in this decision. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As both parties did not raise any concerns regarding the service of documentary evidence and confirmed that they had the opportunity to review all evidence served on them by the other party, I find the parties were sufficiently served in accordance with the Act.

Preliminary and Procedural Matter

The parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them.

Issues to be Decided

- Has the tenant provided sufficient evidence to support a monetary claim under the Act?
- Is the tenant entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on August 1, 2020 and was scheduled to end on March 1, 2021. While the tenancy agreement also stated “or earlier” I find that the only “earlier” date could be by mutual agreement of the parties in writing, of which there was no evidence presented at the hearing to support that there was a mutual agreement in writing to end the tenancy earlier than March 1, 2021. The reason for ending the fixed-term tenancy is listed as “Demolished” which both parties initialled on the tenancy agreement. The parties confirmed that the landlord served the first page of the 4 Month Notice on the tenant on September 18, 2020, and the effective vacancy date is listed as February 1, 2020, which I will address further in my analysis below.

The tenant provided their 10 Day written notice end tenancy dated September 28, 2020, which states they will be vacating the rental unit on October 18, 2020. The parties confirmed during the hearing that the tenant did not return the rental unit keys until October 19, 2020.

The tenant is seeking \$774.00 for October 20, 2020 to October 31, 2020 as the return of rent paid for October, plus \$2,000.00 as compensation for being served with a 4 Month Notice for their last month of rent.

Analysis

Based on the documentary evidence before me and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the landlord. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the tenant did what is reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Residential Tenancy Branch (RTB) Policy Guideline 30 – Fixed Term Tenancies (PG 30) applies and states the following in part on page 3:

A landlord cannot give notice for landlord's use of property that will end a fixed term tenancy before the end of the fixed term. If a landlord wishes to end the tenancy for landlord's use of property, which may include use by the purchaser of the property, the landlord must serve a proper Two Month Notice to End Tenancy for Landlord's Use of Property (form RTB-32) on the tenant. Before a landlord can serve notice for the purchaser's use of the property, the landlord must have an agreement in good faith to sell the property, all conditions of the sale must have been satisfied and the purchaser must ask the landlord, in writing, to give notice to end the tenancy. The effective date of that Notice will be two months from the end of the month in which the Notice was served but in any case not before the end of the fixed term. **The tenant may not, during the fixed term, give the landlord a minimum 10 day notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice.**

[emphasis added]

Section 53 of the Act applies and states:

Incorrect effective dates automatically changed

53(1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.

(2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

(3) In the case of a notice to end a tenancy, other than a notice under section 45 (3) [*tenant's notice: landlord breach of material term*], 46 [*landlord's notice: non-payment of rent*] or 50 [*tenant may end tenancy early*], if the effective date stated in the notice is any day other than 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, the effective date is deemed to be 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

(a) that complies with the required notice period, or

(b) if the landlord gives a longer notice period, that complies with that longer notice period.

Based on the above, I find the 4 Month Notice issued by the landlord would automatically correct the effective vacancy date from February 1, 2021 to March 1, 2021 under section 53 of the Act. March 1, 2021 was the end of the fixed term tenancy date. As a result of the above, I find that the landlord could not end the tenancy earlier than March 1, 2021 and that the tenant could not provide a 10 Day Notice to end the tenancy earlier than March 1, 2021 as the Act does not permit either to be before the end of the fixed-term tenancy date and only allows such for a periodic/month to month tenancy. In the matter before me, the fixed-term tenancy would not have reverted to a month to month tenancy until after March 1, 2021.

While the reason stated on the tenancy agreement as "Demolished" does not comply with section 13.1 of the Regulation, I do not find this impacts my decision further as the parties signed a fixed-term tenancy and the fixed-term tenancy would have automatically reverted to a month to month tenancy after March 1, 2021 under the Act.

Given the above, I find the tenant has failed to prove that they are owed \$774.00 for the remainder of October 2020 rent as the tenant was not permitted under the Act to issue a 10 Day notice to end a fixed-term tenancy earlier than March 1, 2021, the corrected effective date on the 4 Month Notice. In addition, I find the tenant is not owed \$2,000.00 as the tenant would have had pay rent for November and December 2020 and January and February of 2021 as the fixed-term tenancy did not end until March 1, 2021. Therefore, I find the tenant has already been compensated for rent they did not pay for November 2020, December 2020, January 2021, and February 2021. Furthermore, I find the landlord could not have re-rented the rental unit pursuant to section 7 of the Act to minimize their loss as the home was scheduled for demolition after March 1, 2021.

As the tenant's application fails, I do not grant the filing fee.

Conclusion

The tenant's application fails and is dismissed in full due to insufficient evidence, without leave to reapply.

The filing fee is not granted as the application had no merit.

This decision will be emailed to both parties as indicated above.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: March 17, 2021

Residential Tenancy Branch