



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OLC, CNL-4M, FFT**

Introduction

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

- An order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62;
- Cancellation of a 4 Month Notice to End Tenancy for Landlord's Use pursuant to section 49; and
- Authorization to recover their filing fee from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant was represented by their advocate.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing the parties confirmed that no 4 Month Notice to End Tenancy was ever issued and that the tenant has vacated the rental unit ending this tenancy. The tenant pursued the portion of their application seeking an Order of Compliance stating they believe they suffered stress due to the landlords' actions.

Issue(s) to be Decided

Should the landlord be ordered to comply with the Act, regulations or tenancy agreement?

Is the tenant entitled to recover their filing fee from the landlords?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree that this fixed term tenancy began in October 2020. The monthly rent was \$1,200.00 payable on the first of each month. The tenancy agreement provides that the fixed tenancy ends on February 28, 2021 and that the tenant must vacate the rental unit at the end of the tenancy. The parties entered into a new fixed-term tenancy agreement commencing March 1, 2021 for a period ending July 1, 2021 with the tenant agreeing to vacate the rental unit at the end of this fixed-term period. The parties subsequently signed a Mutual Agreement that the tenancy ends on April 16, 2021.

While the parties agree that no Notice to End Tenancy was ever issued by the landlords, the tenant submits that the fixed-term tenancy with a vacancy clause should be considered a Notice which gives rise to a tenant's right for compensation pursuant to section 51.

The tenant also seeks aggravated damages in the amount of \$5,000.00 claiming they have suffered "mental anguish and distress, physical pain and suffering, stress, hardship, humiliation and inconvenience" due to the landlords' conduct. The tenant made lengthy submissions about their interactions with the landlords, their limited economic means, and what they perceived to be infringement on their right to quiet enjoyment of the rental unit. The tenant mentioned an incident where they heard footsteps from the upstairs suite when they were crying about the death of a pet gerbil, which they interpreted to be a violation of their personal space..

Analysis

Section 51(1) of the *Act* provides that a tenant who receives a notice to end a tenancy under section 49 is entitled to compensation from the landlord.

I find the tenant's submission that the fixed term tenancy agreement should be interpreted as a notice under section 49 to have no foundation in law or the evidentiary materials. I find the tenant's attempt to claim an amount equivalent to one month's rent pursuant to the *Act* when no notice was issued to have no merit.

The tenant seeks aggravated damages for the conduct of the landlord during the course of the tenancy. Aggravated damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Intangible losses for physical inconvenience and discomfort, pain and suffering, loss of amenities, mental distress, etc.)

The damage must be caused by the deliberate or negligent act or omission of the wrongdoer. However, unlike punitive damages, the conduct of the wrongdoer need not contain an element of wilfulness or recklessness in order for an award of aggravated damages to be made. All that is necessary is that the wrongdoer's conduct was highhanded. The damage must also be reasonably foreseeable that the breach or negligence would cause the distress claimed.

They must also be sufficiently significant in depth, or duration, or both, that they represent a significant influence on the wronged person's life. They are awarded where the person wronged cannot be fully compensated by an award for pecuniary losses. Aggravated damages are rarely awarded and must specifically be sought. The damage award is for aggravation of the injury by the wrongdoer's highhanded conduct.

I find that the tenant has not met their evidentiary burden to establish a basis for any award for damages or aggravated damages. I find the tenant's testimony and documentary submissions to be comprised of complaints about incidents and events which do not reasonably demonstrate any disruption or impact on their right to quiet enjoyment of their rental unit. I find the tenant's complaints about the landlords to be generally subjective, exaggerated and without support in the documentary evidence.

Consequently, I dismiss the tenant's claim without leave to reapply.

Conclusion

The tenant's claim is dismissed in its entirety 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: June 7, 2021

Residential Tenancy Branch