Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held on October 25, 2021. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "*Act*"):

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67; and,
- recovery of the filing fee.

The Tenant attended the hearing. However, the Landlord did not. The Tenant stated that she sent her Notice of Hearing and first evidence package by registered mail on May 7, 2021, to the Landlord's address, as listed on the tenancy agreement. The Tenant provided proof of mailing into evidence. The Tenant stated she sent a second evidence package to the Landlord on October 5, 2021. Proof of mailing was provided. Pursuant to sections 89 and 90 of the *Act*, the Tenant's application and evidence packages are deemed to be received 5 days after they were sent, on May 12, 2021, and October 10, 2021, respectively. I find the Tenant sufficiently served the Landlord for the purposes of this proceeding.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Tenant entitled to compensation for money owed or damage or loss under the Act?

Background and Evidence

A copy of the tenancy agreement was provided into evidence, which shows that monthly rent was set at $2,800.00 and was to be paid on the first of the month. The Landlord signed the tenancy agreement on May 13, 2019, and the Tenant signed the agreement on May 15, 2019. The tenancy agreement specified that the Tenant was to pay the security deposit by May 20, 2019.

The Tenant explained in the hearing that she was supposed to move in on July 15, 2019, but the Landlord unilaterally cancelled the tenancy agreement, without her consent, a couple of weeks after the agreement was signed, but before she got the chance to move in. The Tenant stated that she had already given notice to move out of her previous place, in Ontario, by the time the Landlord backed out of the tenancy agreement, which left her without a place to stay. The Tenant stated she suffered massive financial losses, because she had already started executing on moving her life from Ontario to BC when she was told she would have no place to move to when she got here. The Tenant stated that she never ended up moving in because the Landlord sold the rental unit and did so in an opaque and dishonest manner.

The Tenant explained that she recently retired and decided she wanted to live in BC, somewhere near Vancouver. Sometime in early May 2019, the Tenant found the subject rental unit advertised online, and she had discussions with the Landlord about price and other details at that time. The Tenant stated that she and the Landlord tentatively agreed on the terms of the tenancy, and the Landlord sent a signed tenancy agreement to her on May 13, 2019. The Tenant stated that she then flew out to BC from Ontario on May 14, 2019, to view the rental unit in person with the Landlord. The Tenant signed her portion of the tenancy agreement on May 15, 2019, and returned to the rental unit to meet again with the Landlord, and take measurements before she flew back to Ontario to continue preparing for her move to BC. As noted in the tenancy agreement, the Tenant stated that she paid her security deposit on May 20, 2019, by e-transfer.

The Tenant provided a copy of her banking records to show it was sent, but never cashed. The Tenant provided a copy of the text messages showing she told the Landlord it was sent, which he thanked her for. The Tenant explained that she received an email on or around June 3, 2019, from the Landlord explaining that he had sold the

rental unit, and that the Tenant was not entitled to move in. The Tenant provided a copy of some of the emails and text messages that followed. The Landlord explained in these messages that since the Tenant had not moved in, she would not be entitled to any sort of 2 Month Notice, or compensation.

The Tenant provided a copy of the sales history for the subject rental unit, which shows that the unit was listed for sale on April 15, 2019, and that it sold on May 15, 2019. The Tenant stated that the Landlord never once explained that the rental unit was for sale while she was looking to rent it. The Tenant also pointed out that the Landlord had sold the unit on May 15, 2021, but failed to tell her anything until he emailed her on June 3, 2019, saying she could no longer move in. The Tenant stated that she initialled missed the June 3, 2019, email and didn't see this email until June 7, 2019, when she asked the Landlord about booking an elevator for her move in date of July 15, 2019. The Tenant stated that she didn't hear from the Landlord again after June 7, 2019, when he told her that he was sorry, and that she should try to find another apartment.

The Tenant stated that although she became aware that the Landlord would not allow her to move in on June 7, 2019, it was much too late to back out of her plan to leave her current apartment in Ontario. As such, she had to move out of that apartment at the end of June 2019. The Tenant stated that her initial plan was to drive across Canada with her belongings, but she was forced to rent a storage locker, and pay to have her belongings moved into that locker (in Ontario) as of the end of June.

The Tenant stated that she stayed at friend's houses in Ontario while she continued her search for apartments on the west coast of BC. The Tenant stated that she flew out to BC on August 11, 2019, for two weeks to try to find an apartment to rent, and she visited several cities, including Nanaimo, Victoria, and Vancouver. Then following this trip, the Tenant stated she decided she would try to find a home near Nanaimo. At this point, she continued searching online, and after finding a suitable place online in Nanaimo, she booked an appointment with a real estate agent to view the property, in person, in October. The Tenant stated that she flew out to BC again on October 8, 2019, and stayed until October 19, 2019. The Tenant stated that she decided not to take the unit she viewed, as it was not "as advertised."

Following this, the Tenant returned to Ontario and continued searching for apartments to rent. The Tenant started a relationship with an individual residing in or around Nanaimo, BC, who helped her view apartments virtually from Ontario. The Tenant stated that she finally found a new place to rent in December 2019, and she paid a deposit on December 24, 2019. This new lease was set to start on February 1, 2019,

although the Tenant stated she did not move into the new unit until April 7, 2020, due to COVID related travel delays and due to the fact she was staying at another friend's house in Ontario.

The Tenant stated that she incurred many expenses from the time she found out the Landlord was backing out of her tenancy agreement, to the time she actually was able to move out to BC, in a suitable apartment, with all of her belongings. The Tenant itemized her expenses, and they are laid out on her application and her monetary worksheet as follows:

1) $2,800.00 – One Month's Compensation Pursuant to section 51

The Tenant stated that although she never received a 2 Month Notice to End Tenancy, she feels she should have been given one, along with the appropriate compensation, given the Landlord chose to end the tenancy because he was selling the rental unit.

2) $428.20 – Aeroplan booking fees, rental car, gas
3) $51.55 – Gas

The Tenant explained that the above noted costs were incurred to attend the rental unit to view the apartment and sign the lease in May of 2019. The Tenant provided copies of Visa statements to corroborate the amounts.

4) $2,034.00 – Moving Fees
5) $3,497.00 – Storage locker

The Tenant explained that this is the cost for the storage locker for July 2019 through till March 2020, which is the time from when she was supposed to move into the rental unit, until the time she finally found a place the following year. The Tenant stated that the moving fees are the expenses incurred to move her belongings out of her Ontario rental unit, into storage in Ontario, until she was able to find another suitable place to move in BC. The Tenant stated she is not seeking moving expenses for her move across the country, as that was an expense she would have to incur regardless of when she moved. The Tenant provided receipt and invoices for these items.

6) $654.02 - Gas, Flight fees
7) $553.60 – Car rental
8) $137.81 – Gas

The Tenant stated that these 3 items were incurred when she flew out in August to search for apartments. Visa statements were provided.

9) $1,084.80 – flight fees, gas, car rental
10) $102.59 – Gas

The Tenant stated that the above two items were incurred on her last trip out, in October 2019.

11) $637.04 – Aeroplan points repayment

The Tenant stated that she chose to fly out to view the apartments on multiple occasions using her accumulated Aeroplan points. The Tenant feels that the only reason she was required to spend these points was because the Landlord left her without a place to move to, and she tried to keep her costs down, so she used points to fly. The Tenant estimated the value of the points she used by taking one the of flights she paid for, and deducting taxes to find the value of the points used for 2 similar flights.

Analysis

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 whatever 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 everything possible to minimize the damage or losses that were incurred.

First, I turn to the Tenant's request to be compensated for 1 month's worth of rent pursuant to section 51 of the Act. I note section 51 of the Act is only applicable when a

Tenant receives a Notice under section 49 of the Act (2 Month Notice). In this case, no valid Notice to End Tenancy was issued, and therefore, the Tenant is not eligible for compensation under section 51 of the Act. As stated in the hearing, I decline to award this item.

Next, I turn to the remaining items on the Tenant's application (as listed above under item #2 to #11). I have reviewed the totality of the testimony and evidence, and I find the Landlord acted improperly when he informed the Tenant she was no longer able to move into the rental unit, given the contract had already been entered into. In effect, the Landlord unilaterally cancelled a legally binding tenancy agreement.

I note the following portion of the Act:

Start of rights and obligations under tenancy agreement

> ***16*** *The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit*

In order to enter into a contract, mutual declarations of intent must be exchanged. In this case, the Landlord agreed to rent the premises to the Tenant for a price. The Tenant agreed to pay this price, along with a security deposit, by May 20, 2019, as per the tenancy agreement provided. I note both parties had signed the tenancy agreement by May 15, 2019. In most cases, a contract is considered to have been "entered into" once the material terms of the contract have been agreed upon (an offer, and its acceptance). I find the material terms of the tenancy agreement were agreed upon on May 15, 2019, when both parties finished signing the document. I note that the Tenant had yet to pay her security deposit until May 20, 2019. However, I find the parties rights and obligations under the tenancy agreement began at the time they both signed the agreement by May 15, 2019. This reflects the start of rights and obligations under the tenancy agreement and the Act.

It does not appear the Landlord took sufficient steps to communicate with the Tenant what was happening with the rental unit, and its potential sale. As per the listing details provided by the Tenant, it appears the unit was posted for sale on April 15, 2019, and that it sold on May 15, 2019. It appears this was completely withheld from the Tenant until June 3, 2020, when the Landlord improperly told the Tenant she could no longer move in, given it was sold.

I note the Tenant sent her security deposit by May 20, 2019, as she was required to under the tenancy agreement. However, rather than deposit the e-transfer for the deposit, the Landlord responded almost 2 weeks later telling the Tenant to find another place to rent. Even though the Landlord never cashed the e-transfer, I find the rights of both parties had already begun under the Act, and the Landlord was not entitled to unilaterally cancel the agreement, without liability. The Tenant upheld her part of the agreement, by sending the security deposit by the deadline, but the Landlord concealed the pending sale of his property, failed to communicate in a timely manner, put the Tenant in a very difficult spot, and breached the tenancy agreement. I am satisfied the Landlord breached the tenancy agreement, and that the Tenant suffered significant loss as a result of this breach, since she took steps to end her tenancy and move from Ontario to BC as soon as she signed the tenancy agreement for this rental unit on May 15, 2019.

The Tenant is seeking to recover costs she incurred for 3 trips to BC (flight, gas, car rental), plus storage costs in Ontario, and the costs to move her belongings into the storage locker while she procured a new rental unit in BC. I note the Tenant took 3 trips to BC, the first of which was in May 2019 to view the rental unit and sign the lease. The second was in August, to search for a new city to live in, and a new rental unit, followed by a 3rd visit in October to view another apartment. I have reviewed the totality of testimony and evidence on this matter. I find the Tenant provided an easy to follow breakdown of the costs (along with accompanying credit card statements). I find she demonstrated the value of her loss in a reasonable manner. However, I am not satisfied she took sufficient steps to mitigate the expenses.

I accept that the Tenant may have had to invest significant time and incur some additional expenses to procure a new place to live. However, I am not satisfied that the Tenant couldn't have don't more of this work virtually, by using an agent local to BC, or leveraging online services, online rental postings, virtual showings, or other cost mitigating strategies. I am not satisfied the Tenant had to physically fly out, numerous times for multiple weeks, to procure a sufficient place to live. I decline to award the full amount of the items related to flights, car rentals, and gas (items 2, 3, and 6-11 listed above), as I find the Tenant only partially mitigated her losses.

I note the following relevant portions of the **Policy Guideline #5 – Duty to Minimize Loss**:

> ***Partial mitigation***
> *Partial mitigation may occur when a person takes some, but not all reasonable steps to minimize the damage or loss. If in the above example the tenant*

reported the leak, the landlord failed to make the repairs and the tenant did not apply for dispute resolution soon after and more damage occurred, this could constitute partial mitigation. In such a case, an arbitrator may award a claim for some, but not all damage or loss that occurred.

I find a more appropriate amount, given the above findings, is 50% of the amount sought for these items, which is $1,824.81.

With respect to items # 4 and 5 listed above, for storage and moving, I accept that the Tenant only had to move her items into storage as a result of the Landlord's breach of the tenancy agreement because she had no where to go. This resulted in the Tenant having to hire movers to move, and temporarily store her belongings in a storage locked in Ontario while she continued her search for a new place in BC. I note the Tenant provided receipts for these items, and I am satisfied as to the value of her asserted loss.

However, I find the Tenant only partially mitigated her losses with respect to storage costs. I note the Tenant is seeking storage fees that span a period of nearly 10 months. While I accept that finding a new, different apartment on the other side of the country is not an easy or cheap endeavour, I am not satisfied that this process should take 10 months, or that the Tenant should not have been reasonably able to complete this process in a more timely manner. I note the Tenant took steps to find savings, and reduce her costs at the storage locker (using coupons to get monthly reductions). However, I find this is only partial mitigation, given the excessive amount of time that the Tenant required the storage services, and the lengthy period of time it took to procure a new rental.

I note the Tenant is not seeking to recover moving costs she incurred to move from Ontario to BC, but rather she is seeking the moving costs she had to pay to move from her rental unit in Ontario, to a storage locker in Ontario. I accept that this was only necessary because the Tenant had no place to move to, after the Landlord breached the agreement, and cancelled her tenancy. The Tenant had little choice but to pay to move her items into storage. I find the Landlord is responsible for the costs for this move, as it was incurred directly due to his actions. There is little that could have been done to mitigate this one-time moving cost, and I award this amount in full, $2,034.00.

However, as stated above, I find the Tenant only partially mitigated her storage costs/losses, so I award a reduced amount for the storage costs. I award 30% of the Tenants storage costs, which amounts to $1,049.91.

As the Tenant was successful with her application, I also grant her the recovery of the filing fee ($100.00) against the Landlord, pursuant to section 72 of the Act.

In summary, I grant the Tenant a monetary order in the amount of $5,008.72 for the sum of the above noted items.

Conclusion

I grant the Tenant a monetary order in the amount of $5,008.72. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: October 26, 2021

Residential Tenancy Branch