



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SONAS MEDICAL SERVICES
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on May 4, 2021 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property; and
- an order granting the return of the filing fee.

The Tenant and the Landlord's Agent P.C. attended the hearing at the appointed date and time. At the beginning of the hearing, the parties acknowledged receipt of their respective application package and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

Preliminary Matters

At the start of the hearing, the Tenant clarified that he was not served a Two Month Notice to End Tenancy for Landlord's Use. Instead, the Tenant meant to apply for general monetary compensation, rather than compensation pursuant to Section 51 of the *Act*. During the hearing, the parties both agreed to amend the Tenant's Application to reflect a claim for general compensation.

The parties were given an 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.

Issue(s) to be Decided

1. Is the Tenant entitled to a Monetary Order for money owed or compensation for loss under the *Act*, regulation, or tenancy agreement and recovery of the filing fee pursuant to sections 67 and 72 of the *Act*?

Background and Evidence

The Tenant stated that after completing a rental application for the rental unit, the parties discussed the terms of the tenancy, establishing a move in date of May 4, 2021, the amount of rent being sought, and paid the security deposit to the Landlord. The Tenant stated that he made moving arrangements and was meant to sign the tenancy agreement on the move in date. The Tenant stated that he was contacted by the Landlord the day before his possession date at which point, he was notified that there was a Police incident and that the Landlord was no longer able to offer the rental unit for rent, therefore, cancelling the tenancy before it began.

The Tenant stated that he was required to move twice as a result of the Landlord cancelling his tenancy. The Tenant was under the impression that the Landlord was not permitted to end the tenancy in such a fashion. The Tenant was asked about the specific value of his loss. The Tenant was unable to provide these details during the hearing.

The Landlord confirmed that the parties has agreed to certain terms relating to establishing the tenancy, however, the Landlord was of the impression that no tenancy exists as the parties had not yet signed the tenancy agreement. The Landlord stated that there had been an unforeseen Police incident which required the Landlord to cancel the tenancy. The Landlord stated that the Tenant's security deposit was returned.

Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

In relation to the monetary compensation sought by the Tenant, Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

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 for in sections 7 and 67 of the *Act*. Pursuant to Residential Tenancy Policy Guideline #16 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 case, the burden of proof is on the Tenant to prove the existence of the damage or 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 was reasonable to minimize the damage or losses that were incurred.

The Tenant is seeking monetary compensation in relation to the Landlord cancelling the tenancy the day before it was meant to start. The Landlord is of the impression that no tenancy exists and that he cancelled the tenancy as a result of a Police incident.

According to the Tenancy act: Tenancy agreements include the standard terms

- 12** The standard terms are terms of every tenancy agreement
- (a) whether the tenancy agreement was entered into on or before, or after, January 1, 2004, and
 - (b) **whether or not the tenancy agreement is in writing.**

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 this case, I accept that the parties had agreed to a start date to the tenancy, established the amount of rent paid to the Landlord, and the Tenant had paid a deposit to the Landlord. I find that the parties had established a verbal tenancy agreement. As such, I find that the Landlord was not entitled to end the tenancy the day before it was meant to start, and has not ended the tenancy in a manner permitted under the *Act*.

While I have found that the Landlord has breached the *Act*, I find that the Tenant has provided insufficient evidence to demonstrate that he suffered a loss. If so, the Tenant has also provided insufficient evidence to demonstrate the value of the loss. As such, I am unable to award the Tenant any monetary compensation and dismiss the Tenant's claim for compensation without leave to reapply.

Seeing as the Landlord breached the *Act*, I find that the Tenant is entitled to the return of the \$100.00 filing fee and award the Tenant a monetary order in the amount of \$100.00 pursuant to Section 72 of the *Act*.

Conclusion

I dismiss the Tenant's Application for compensation relating loss without leave to reapply. As the Landlord had breached the *Act*, I award the Tenant a monetary order in the amount of \$100.00 which represents the return of the filing fee paid to make the Application. The Tenant is required to serve the monetary order to the Landlord.

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: November 05, 2021

Residential Tenancy Branch