



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC MNDCT FFT

Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The tenant applied for a monetary order in the amount of \$40,240.00, for 12 months' compensation due to an allegation that the landlord failed to comply with the reason stated on the 2 Month Notice to End Tenancy for Landlord's Use of Property (2 Month Notice), for \$10,560.00 for tenant supplied potable water, and to recover the cost of the filing fee.

The tenant, counsel for the landlords, KP (counsel) and an agent for the landlords, MN (agent) attended the teleconference hearing. The tenant and the agent were affirmed. Counsel has already sworn an oath when called to the Bar. The hearing process was explained, and the parties were given an opportunity to ask questions during the hearing. Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing and make submissions to me.

I have reviewed all testimony and documentary evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules); however, I refer to only the relevant evidence related to the facts and issues in this decision. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As neither party raised issues regarding the service of documentary evidence or their ability to review such evidence, I find the parties were sufficiently served in accordance with the Act as a result.

Preliminary and Procedural Matters

The participants were informed at the start of the hearing that recording of the dispute resolution is prohibited under the RTB Rule 6.11. The participants were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the participants were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. None of the participants had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the tenant and counsel confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

Regarding the water component portion of the tenant's claim, in the amount of \$10,560.00, I decline to hear this portion of the tenant's claim as that amount exceeds my jurisdiction under section 58 of the Act, when combined raise the total claim to \$40,240.00, when the limit as of the date of the hearing is \$35,000.00. I do not grant leave to reapply for the water component portion of the claim pursuant to RTB Rule 2.9, which applies and states:

2.9 No divided claims

An applicant may not divide a claim.

In addition, the tenant requested to reduce the water component portion of their claim to \$1.00 during the hearing, which I refused to allow as I find that the respondents were not served with this amendment prior to the hearing and that the time for amendments have passed under the Act and Rules. At this point in the hearing, the tenant then requested to withdraw the water component portion, which was permitted, however the tenant is not granted leave to reapply due to RTB Rule 2.9 mentioned above.

I note that tenant claimed they requested to waive any amount over \$35,000.00, which I do not see in any portion of the tenant's application.

Issues to be Decided

- Is the tenant entitled to a monetary order for compensation in the amount of 12 times the monthly rent under the Act?

- If yes, is the tenant also 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 15, 2014 and reverted to a month-to-month tenancy after August 31, 2015.

The tenant failed to provide a copy of the 2 Month Notice to End Tenancy for Landlord's Use of Property (2 Month Notice). In addition, the respondent did not submit a copy of a 2 Month Notice into evidence.

The claim before me is the tenant's claim and at the very least, I would expect for the tenant to supply a copy of the 2 Month Notice before I hear a response from the landlord. As there is no 2 Month Notice for my consideration, I will address this issue below.

Analysis

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

Firstly, the tenant is intending to rely on section 51(2) of the Act which states:

(2) Subject to subsection (3), **the landlord** or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, **in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if the landlord or purchaser, as applicable, does not establish that**

(a) **the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and**

(b) **the rental unit, except in respect of the purpose specified in section 49 (6) (a), has been used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.**

[Emphasis added]

Given the above, the first issue for me to determine is whether there is a 2 Month Notice before me. Once I am satisfied that there is, I would then hear testimony and consider documentary evidence from the landlord.

In this matter, I find the tenant failed to exercise reasonable due diligence as the tenant failed to submit a copy of the 2 Month Notice for my consideration. Furthermore, I find that it is not the responsibility of the respondent to substantiate a claim for the applicant. Therefore, I find that the onus of proof does not revert to the landlord until such time that I am satisfied that a 2 Month Notice exists, is before me for my consideration, and that I have had the opportunity to review what is listed on the 2 Month Notice.

As the tenant failed to submit a copy of the 2 Month Notice and there is no 2 Month Notice before me for my consideration, **I dismiss** the tenant's application in full without leave to reapply, as I find the onus does not revert to the landlord without first supplying a copy of the 2 Month Notice. I cannot think of a more important document to submit in this matter, than the 2 Month Notice and yet it was not provided for my consideration.

I do not grant the filing fee as this matter has been dismissed without leave to reapply.

Conclusion

The tenant's application fails and is dismissed without leave to reapply.

The filing fee is not granted.

This decision will be emailed to both parties.

This decision is final and binding on the parties, unless 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: February 23, 2022

Residential Tenancy Branch