



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC 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 \$6,650.00 comprised of \$5,000.00 due to having to sign mutual agreements to end the tenancy at the start of the tenancy plus \$1,250.00 for last months rent due to the unit being sold.

The tenant, the landlord, and an agent for the landlord, AS (agent) attended the teleconference hearing. All participants were affirmed. 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 parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the RTB Rule 6.11. The parties 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 parties 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. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

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

Issues to be Decided

- Is the tenant entitled to a monetary order for compensation of \$6,650.00s 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 agreements were submitted in evidence. The landlord via their agent requested that the tenant signed back-to-back fixed-term tenancy agreements however used the incorrect method of doing so by citing “mutual agreement to end tenancy” as the reason under section 13.1 of the Regulation, which I will address further in my analysis below.

The first tenancy agreement began on March 1, 2019. Eventually, after two additional fixed-term tenancies, both of which also included a separate mutual agreement to end the tenancy, the tenant vacated the rental unit on May 31, 2021, based on a final signed Mutual Agreement to End Tenancy dated April 3, 2020 (Final Mutual Agreement). In the Final Mutual Agreement the parties agreed that the tenant would vacate the rental unit on May 31, 2021, which the tenant did.

The parties agreed that the tenant was not served a 2 Month Notice to End the Tenancy for Landlord’s Use of Property (2 Month Notice) and I will address what would have occurred if the property had sold, which was raised by the tenant in their application.

The tenant is seeking the last month's rent of \$1,250.00 to be returned as compensation as if a 2 Month Notice had been issued, plus \$5,000.00 for "emotional distress" for having been forced to sign back-to-back fixed-term tenancies, which included mutual agreement to end the tenancy for each fixed-term tenancy.

The tenant confirmed that they did not have a gun to their head to be forced to signed the Final Mutual Agreement. Instead, the tenant stated, "what other choice did I have?"

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.

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.

Section 13.1 of the Regulation applies and states:

Fixed term tenancy — circumstances when tenant must vacate at end of term

13.1(1) In this section, "**close family member**" has the same meaning as in section 49 (1) of the Act.

(2) For the purposes of section 97 (2) (a.1) of the Act [*prescribing circumstances when landlord may include term requiring tenant to vacate*], **the circumstances in which a landlord may include in a fixed term tenancy agreement a requirement that the tenant vacate a rental unit at the end of the term are that**

(a) **the landlord is an individual, and**

(b) **that landlord or a close family member of that landlord intends in good faith at the time of entering into the tenancy agreement to occupy the rental unit at the end of the term.**

[emphasis added]

Given the above, I find the landlord was unable to rely on a Mutual Agreement at the start of the tenancy as section 13.1 of the Regulation does not permit "Mutual Agreement" as the reason to end a fixed-term tenancy under that section of the Regulation. Therefore, I find the landlord attempted to avoid or contract out of the Act or the Regulation and that any attempt to avoid or contract out of the Act **is of no effect** as per section 5 of the Act, which applies and states:

This Act cannot be avoided

5(1) **Landlords and tenants may not avoid or contract out of this Act or the regulations.**

(2) **Any attempt to avoid or contract out of this Act or the regulations is of no effect.**

[emphasis added]

I find the tenancy would have reverted to a month-to-month tenancy after the last fixed-term agreement was signed as the fixed-term portion was **unenforceable under the Act.**

I CAUTION the landlord and their agent not to attempt to end a tenancy via section 13.1 of the Regulation in the future using "Mutual Agreement to End the Tenancy." The tenant is at liberty to inform the RTB *Compliance and Enforcement Unit* of this decision given my above-noted caution.

Section 44(1)(c) of the Act also applies, however, and states:

How a tenancy ends

44(1)A tenancy ends only if one or more of the following applies:
(c) the landlord and tenant agree in writing to end the tenancy
[emphasis added]

Given the signed Final Mutual Agreement, I make two findings. Firstly, in response to the tenant signing the Final Mutual Agreement, I find that duress is defined as follows:

"**any unlawful threat or coercion used...** to induce another to act [or not act] in a manner [they] otherwise would not [or would]". Duress is pressure exerted upon a person to coerce that person to perform an act they ordinarily would not perform.

[Black's Law Dictionary, 6th ed.]

Given the above, I find the tenant has provided insufficient evidence that they were unlawfully threatened or coerced to sign any of the mutual agreements and did so to rather avoid finding a new rental unit. Therefore, I find the tenant has failed to prove duress and I find the tenant had the opportunity to not sign the mutual agreement. I also find the tenant could have applied for dispute resolution to allow an arbitrator to determine if the fixed-term tenancy reverted to a month-to-month tenancy; however, the tenant failed to make such an application.

Secondly, I find the Final Mutual Agreement was lawful and that the tenancy did end based on that separate agreement signed by the parties.

I recommend that the landlord and agent use the **current *Mutual Agreement to End a Tenancy* form, RTB-8, in any future tenancies where applicable**, which was created and posted to the RTB public website under "Forms" in March 2021, and which includes the following important information for tenants:

NOTE: This form is NOT a Notice to End Tenancy. Neither a Landlord nor a Tenant is under any obligation to sign this form. By signing this form, both parties understand and agree the tenancy will end with no further obligation between landlord(s) or tenant(s). If you are the tenant, this may include foregoing any compensation you may be due if you were served a Notice to End Tenancy. If you have questions about tenant or landlord rights and responsibilities under the Residential Tenancy Act or the Manufactured Home Part Tenancy Act, contact the Residential Tenancy Branch using the information provided at the bottom of this form before you sign.

Although the landlord used a 2014 mutual agreement form, I note that the new form was not created until after the Final Mutual Agreement was signed on April 3, 2020.

As a result, I find the tenant has failed to meet the burden of proof in proving the 4-part test described above and is not owed any compensation under the Act. I have reached this finding as the tenant made the decision to sign the Final Mutual Agreement, which I find ended the tenancy as of May 31, 2021. The tenant is not owed the last month's rent or has proven any emotional distress related to a \$5,000.00 claim under the Act.

Given the above, I do not grant the filing for the tenant.

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.

The landlord is cautioned that a fixed-term tenancy cannot end based on a Mutual Agreement under section 13.1 of the Regulation.

In addition, the landlord is recommended to use the current RTB Form 8 if relying on any Mutual Agreement to End a Tenancy in the future.

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 14, 2022

Residential Tenancy Branch