



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

The former Tenant (hereinafter the “Tenant”) filed an Application for Dispute Resolution on November 30, 2021. They are seeking compensation related to the Landlord ending the tenancy in 2019.

The matter proceeded by hearing on June 28, 2022 pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”). In the conference call hearing I explained the process and offered the attending parties the opportunity to ask questions. At the outset, the Landlord in the hearing (hereinafter “Landlord”) confirmed they had the notice of this hearing from the Tenant. The Tenant also confirmed they received the Landlord’s prepared evidence. On this basis, the hearing proceeded.

Issue to be Decided

Is the Tenant entitled to monetary compensation for the Landlord ending the tenancy, pursuant to s. 51 of the *Act*?

Is the Tenant entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

The Tenant provided background information about the tenancy agreement they had in place; however, they did not provide a copy of that agreement. The tenancy started “around 1994”. As indicated on their Application, the rent amount was \$2,075 per month. The Landlord here acquired the property in late 2019.

This tenancy ended when the Tenant vacated the rental unit on December 31, 2019. This was after the Landlord here issued a Two Month Notice to End Tenancy for Landlord's Use of Property, served on October 29, 2019.

Prior to this, as a result of deficiencies in the rental unit, an Arbitrator in 2018 ordered a reduction in rent because of repairs requested by the Tenant, but not completed by the previous landlord. This was ordered as a 40% reduction in rent until the repairs were completed – this amount was \$830.

The Landlord here confirmed they received a reduced rent on November 1, 2019. This was with \$830 reduced. The Tenant confirmed they paid \$1,245 for that month.

The Landlord stated they received nothing for the final month of the tenancy, in December 2019. This was granted to the Tenant in line with their ending the tenancy for the Landlord's personal use of the property. The Tenant confirmed they paid no rent for that final month of the tenancy.

The Tenant here claims the reduced amount of rent as compensation. That amount exactly is \$830. On the Application, the Tenant stated, "I was to receive this compensation until the water and mold damage repairs were completed or until I moved out." They reiterated this point in the hearing, stating "had there been a reduction in rent I still would have got \$830", and "I was still without the use of the space." The Tenant's rationale is that the previous Arbitrator said they would be compensated, and for that final month of the tenancy they were not compensated.

The Landlord responded to these submissions, and the Tenant's Application, to say they didn't know anything initially about this problem. They discovered the reduced rent in November 2021, and then in line with the notice to end tenancy, conceded on the final month of the tenancy being rent-free.

The Tenant reiterated that the reduction in rent was compensation for the lack of space available to them in the rental unit. The previous Arbitrator had "allowed them to reduce rent" payable to the Landlord, until the requested repair was completed, or they moved out.

Analysis

I find the tenancy existed between these parties at the time the Landlord served the Two-Month Notice on October 29, 2019. In this situation, s. 51 applied to the tenancy as it then was:

- (1) A tenant who receives a notice to end a tenancy under s. 49 is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Here, the Landlord granted the Tenant was entitled to the amount of one-month's rent as per the *Act*. There is no question as to the Tenant's right to compensation under s. 51; however, that compensation is limited to "the equivalent of one month's rent payable under the tenancy agreement."

The Tenant points to the previous Arbitrator's decision as granting *compensation* for their limited use of the rental unit from the prior Landlord's lack of repair.

An arbitrator may order compensation in the form of a monetary order from a landlord to a tenant, or repayment to a tenant from a landlord through a *deduction* from rent where some payment was previously made. This is in line with the purpose of compensation: to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred.

I find the previous Arbitrator decision from 2018 allowed for a rent reduction. That was conditional on the Landlord not completing the required repair, a breach of the *Act*.

Governing that rent reduction is s. 65:

- (1) . . .if the director finds that a landlord or tenant has not complied with the *Act*, the regulations or a tenancy agreement, the director [i.e., an arbitrator, as the delegated authority] may make any of the following orders:

- (f) that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement

I find the rent reduction was the Arbitrator's finding 40% for the equivalent to a reduction in the value of the tenancy agreement. The premise was that the *value of the tenancy* to the Tenant was reduced; in this case, that was an actual limitation to the amount of available space. To be clear, this was not a case of compensation to the Tenant; rather, it is equal to a reduction in the monthly rent amount because of the *reduced value* to the Tenant. More simply, this was a *devalued tenancy*, and that was the value of the rent the Tenant was responsible for paying.

I find this was not a matter of compensation for damage or loss; rather, the rental unit was not worth the market rent value and the rent was reduced to the amount of \$1,245. What the Tenant claims for here is akin to additional compensation that is outside of the *Act*. With the value of the tenancy agreement reduced, and no rent paid for December 2019 with the Tenant remaining in the rental unit, there was no loss to them. What they were paying for in its entirety at reduced value was free for that final month. This is not a case where the Tenant was receiving compensation to which they were then denied; rather, they were receiving the full value of what they were paying for. The Tenant received the amount of rent payable under the agreement in terms of the *reduced value of the tenancy agreement*. That was the equivalent of one month's rent payable under the tenancy agreement as it then stood. Any other amounts would equate to unfair compensation to the Tenant and not in line with the intent and purpose of the *Act*.

Conclusion

For the reasons above, I dismiss the Tenant's Application for compensation from the Landlord's end to the tenancy, without leave to reapply. Because they were not successful, I dismiss their claim for reimbursement of the Application filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: June 28, 2022

Residential Tenancy Branch