



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, FFT, MNDCT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$900 pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified, and the landlord confirmed, that the tenant served the landlord with the notice of dispute resolution package and supporting documentary evidence. The landlord testified, and the tenant confirmed, that the landlord served the tenant with their documentary evidence. I find that all parties have been served with the required documents in accordance with the Act.

Preliminary Issue – Tenancy Has Ended

At the outset of the hearing, the tenant advised me that she vacated the rental unit on June 2, 2022. As such, she's no longer entitled to an order that the landlord comply with the Act. Such relief is only available to current tenants. The Residential Tenancy Branch (the "**RTB**") Does not have the jurisdiction to make orders relating to a landlord's conduct against a former tenant. Any allegations of improper conduct carried out by the landlord against the tenant must be addressed in a different forum.

As such, I dismiss the tenant's application for an order that the landlord comply with the act, without leave to reapply.

Issues to be Decided

Is the tenant entitled to:

- 1) a monetary order of \$900; and
- 2) recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written, fixed term tenancy agreement starting September 1, 2021 and ending August 31, 2022. Monthly rent was \$900 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$450 and a "nonrefundable" pet damage deposit of \$75.

The tenant testified that she vacated the rental unit on June 1, 2022, due to constant harassment she alleges she suffered at the hands of the landlord and his son. She testified that she contacted the police on multiple occasions regarding this harassment, as well as the RTB, and both advised her to vacate the rental unit as soon as possible.

She testified that she moved out of the rental unit as soon as she secured a new place to live. She testified that this new unit costs \$1,200 per month. She did not provide any documentary evidence showing the amount of rent she pays for her new rental unit.

The tenant argued that, as a result of the landlord's breach of the Act, she was required to vacate the rental unit and move to somewhere which charged her \$300 more in monthly rent. She seeks compensation in the amount of \$900, representing the difference in what she would have paid in monthly rent had she stayed in the rental unit and what she currently pays for her new rental unit, for the remaining three months of the fixed term tenancy. She argued that she would not have had to incur this increase in rent, if the landlord had not harassed her into leaving.

The landlord denied harassing the tenant. He testified that the tenant acted improperly throughout the tenancy, by having loud gatherings and smoking marijuana outside. He testified that he did not force the tenant to leave or do anything that would have caused her to leave.

I have not detailed the allegations of harassment, as I do not find the conduct relevant to determination of the application.

The landlord testified that, on June 2, 2022, the tenant attended the rental unit to do a move-out condition inspection. At this meeting, he and the tenant signed two documents which stated:

REFUND OF SECURITY DEPOSIT

Received in CASH my security deposit of \$450 (dollars four hundred fifty) from [the landlord] for the cottage [rental unit address redacted]. This is in full settlement with no further claims.

RECEIPT

Received in CASH sum of \$450 (dollars four hundred and fifty) from [the landlord]

Towards my moving expenses for vacating my rented cottage [rental unit address redacted]. This is in full settlement for my lease with [the landlord].

I understand that the security deposit of \$450 (dollars four hundred and fifty) will be refunded after the landlord checks the Cottage rented.

[as written]

I will refer to these to documents collectively as the “**Agreement**”.

The landlord testified that he paid \$900 to the tenant. He testified that he understood the Agreement would settle all issues the tenant might have with regards to the tenancy.

The tenant confirmed that she signed the Agreement and that she received \$900 from landlord. She testified that she did not read the document before signing, as she did not have her glasses. She stated that she did not understand them to preclude her from making additional claims. Rather she understood that she was signing receipts indicating that she had received the full amount of her security deposit, as well as \$450 to cover her moving expenses.

Analysis

The parties do not dispute that they entered into the Agreement at the end of the tenancy. Rather, they dispute what issues the Agreement was meant to settle. The tenant stated she understood the Agreement to be resolving the issue of moving expenses and the security deposit. The landlord stated he understood the Agreement resolved all issues the tenant might have with the tenancy.

Section 45(2) and (3) of the Act sets out how a tenant may end a fixed term tenancy prior to the end of the fixed term. It states:

- (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that
 - (a) is not earlier than one month after the date the landlord receives the notice,
 - (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

The tenant did not end the tenancy pursuant to either of these sections. Instead, she vacated the rental unit on June 1, 2022, three months prior to the end of the fixed term (August 31, 2022). This amounts to a breach of the tenancy agreement.

Section 38 of the Act requires the landlord to return the security deposit at the end of the tenancy (or make an application for dispute resolution to retain the deposit). As such, the landlord did not have an entitlement to unilaterally keep the security deposit.

There is nothing in the Act which requires a landlord to pay for a tenant's moving expenses. Moving costs are paid for by tenants.

The Agreement was made in this context.

I must first note that parties are expected to read and understand the documents they are signing. The fact that the tenant did not read the Agreement before signing does not mean that she is not bound by it. Accordingly, I must determine the meaning of the terms of the Agreement.

The key sentences in the Agreement are, with regards to receiving the security deposit:

This is in full settlement with no further claims.

As stated above, the landlord does not have a unilateral right to withhold a security deposit. Accordingly, he cannot use the return of the security deposit as an incentive to get something he wants. The return of the deposit is something he is obligated to do (as set out in section 38 of the Act). In this context, I understand the words "full settlement with no further claims" to refer to claims that the *landlord* would make that the security deposit would usually cover.

If I were to interpret the phrase "no further claims" to apply to the *tenant's* further claims, then the tenant would not be receiving anything for giving up her right to make claims. She would be agreeing to make no further claims against the landlord in exchange for the return of something she was entitled to (per section 38 of the Act), while still allowing the landlord to make an application for compensation for damage to the rental unit that the security deposit was meant to cover. Such an interpretation would be so one-sided in the landlord's favour as to border on unconscionable.

The second key sentence in the Agreement is with regards to receiving \$450 for moving expenses:

This is in full settlement for my lease

As the tenant is not entitled under the Act to recover her moving expenses from the landlord, the landlord must be receiving something in exchange for paying her \$450 for moving expenses. The words “full settlement” indicate that what is being received is all-encompassing. I understand this clause to mean that the \$450 for moving expenses was paid to the tenant in exchange for the full settlement of any claims the tenant may have against the landlord in relation to the tenancy.

As such, I understand the terms of the Agreement to be:

- 1) the landlord will return the security deposit (\$450) to the tenant;
- 2) the landlord will pay the tenant a further \$450;
- 3) the landlord will not make any application against the tenant in connection with damage done to the rental unit or residential property; and
- 4) the tenant will not make any claim against the landlord in connection with any issue arising out of the tenancy agreement.

Notably absent from the Agreement is any reference to the parties agreeing that the tenant could vacate the rental unit prior to the end of the fixed term. The Agreement makes no reference this issue, and section 44(c) of the Act requires that any agreement to end a tenancy (included a fixed-term tenancy) by mutual agreement be “in writing”. It may be that there is other correspondence or documents in which the parties reached a mutual agreement on this issue, but it was not part of the documents which constituted the Agreement. I make no determination if such a mutual agreement to end tenancy exists between the parties. I only find that it did not from part of the Agreement struck on June 2, 2022.

As the Agreement precludes the tenant from making any claims related to the tenancy against the landlord, I dismiss the tenant's application, without leave to reapply.

Conclusion

I dismiss the tenant's application without leave to reapply.

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: August 29, 2022

Residential Tenancy Branch