Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MOLE HILL COMMUNITY HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, FFT

Introduction

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

- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The tenant, landlord Q.W. and landlord S.M. attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Per section 95(3) of the Act, the parties may be fined up to $5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than $5 000."

Both parties confirmed their email addresses for service of this Decision.

Preliminary Issue- Service

No issues with service were presented by either party in the hearing. Landlord Q.M. testified that they received the tenant's application for dispute resolution and evidence.

The tenant testified that they received the landlord's evidence. I find that both parties were sufficiently served with the other's above materials, for the purposes of this *Act,* pursuant to section 71 of the *Act* because both parties confirmed receipt and no service issues were raised in the hearing.

Preliminary Issue- Amendment

The tenant did not use their legal name on this application for dispute resolution. In the hearing the tenant provided their legal name. Pursuant to section 64 of the *Act,* I amend the tenant's application for dispute resolution to state the tenant's legal name.

Issues to be Decided

1. Is the tenant entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
2. authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on September 1, 2018 and has ended. Monthly rent in the amount of $1,013.00 was payable on the first day of each month. A security deposit of $523.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agree that the subject rental property is a subsidized rental unit in a non-profit housing organization, fully funded by government subsidies.

Both parties agree that the landlord served the tenant with a One Month Notice to End Tenancy for Cause (the "Notice") on or around January 4, 2022. A copy of the Notice was entered into evidence and states the following reason for ending the tenancy:

- Breach of material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Notice is signed and dated by the landlord, gives the address of the subject rental property, states the ground for ending the tenancy and is in the approved form, RTB Form #32. The effective date on the Notice is February 10, 2022.

The details of cause section of the Notice states:

> This is a subsidised rental suite operated under the Provincial Housing Program. Tenants may not be absent for more than 3 months, per the tenancy agreement. The tenant has been absent form the suite (and the country) since September 15th. The tenant was informed in writing at that time that the tenancy would end if they did not reoccupy the suite by December 15th. The tenant now resides abroad and is unable to provide any information about if or when they may return.

Section 23 of the Tenancy Agreement states:

> Extended Absence from Rental Unit:
>
> > "If the Tenant is eligible for a Rent Subsidy and if the Tenant is absent from the Rental Unit for three (3) consecutive months or longer without prior written consent of the Landlord the Landlord may end the Tenancy even if the Rent is paid for that period."

Both parties agreed that the tenant did not dispute the Notice. The tenant testified that they moved out of the subject rental property on January 27, 2022. Landlord Q.W. testified that they did not know the exact date the tenant moved out but it was around that time.

The tenant did not dispute being out of the country from September 15, 2021 to the present date. The tenant testified that they originally planned on returning to Canada on December 16, 2021 to comply with the three month absence rule but were to due so because of changing COVID 19 travel restrictions.

The tenant testified that due to their unforeseen travel issues, the landlord should not have evicted them. The tenant testified that they suffered the following damages as a result of moving out of the subject rental property:

- Cost of movers: $1,407.32,

- Storage costs: $21,756.60,
- Time spent preparing for arbitration: $3,600.00,
- Reputation damage: $3,199.98, and
- Insult to dignity: $27.10.

The tenant is seeking the above damages from the landlord.

Landlord Q.W. testified that the tenant did not dispute the Notice and moved out at the end of January 2022. Landlord Q.W. testified that pursuant to the Notice, the landlord took possession of the subject rental property on February 10, 2022, the effective date on the Notice.

Landlord Q.W. testified that they did everything by the book and are not responsible for the damages alleged by the tenant.

Analysis

Based on the testimony of both parties, I find that the tenant was served with the Notice on or around January 4, 2022.

Section 67 of the *Act* states:

> Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 (PG 16) states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the applicant must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Failure to prove one of the above points means the claim fails.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

In order to be successful in this application for dispute resolution, as stated in section 67 of the *Act,* the tenant must prove, on a balance of probabilities, that the landlord did not complying with this *Act*, the regulations or the tenancy agreement.

I find that pursuant to section 47 of the *Act,* the landlord was permitted to serve the tenant with the Notice as they had reasonable grounds, based on the agreed facts and the tenancy agreement, to service such a notice. While I find that the landlord had reasonable grounds to serve the Notice, I make no finding on whether or not the Notice would have been upheld had the Notice been disputed. I decline to make such a finding as the question is not properly before me as the Notice was not disputed. I find that in serving the Notice, the landlord did not breach the *Act.*

I find that the tenant voluntarily moved out of the subject rental property after receiving the Notice. The tenant had the option of disputing the Notice but elected not to. I find that the extenuating circumstances described by the tenant would have been relevant in an application for dispute resolution seeking to cancel the Notice, but since the tenant voluntarily complied with the Notice, they are not relevant in this application for dispute resolution. I find that in moving out of the subject rental property and claiming damages related to that move, instead of filing to dispute the Notice to prevent the move, the tenant failed to mitigate their damages and so, pursuant to PG 16, their claim fails.

I find that the tenant has not proved, on a balance of probabilities, that the landlord breached the *Act,* tenancy agreement, or regulation as I have already found that the landlord did not breach the *Act* in serving the Notice. The tenant's application is dismissed without leave to reapply on this ground, in addition to their failure to mitigate.

Conclusion

The tenant's application for dispute resolution is dismissed 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: September 16, 2022

Residential Tenancy Branch