



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes:

MNETC, MNDCT, FFT

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss, for compensation related to being served with a Two, Four, or Twelve Notice to End Tenancy, and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on August 27, 2022 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch on August 05, 2022 were sent to the Landlord, via email. The Tenant submitted documentation to corroborate her testimony that these documents were sent to the Landlord via email. The Residential Tenancy Branch granted the Tenant authority to serve the Landlord with documents for these proceedings, via email. On the basis of the Tenant's testimony and the supporting documents, I find that these documents were properly served to the Landlord.

As the aforementioned documents were properly served to the Landlord, the hearing proceeded in the absence of the Landlord and the evidence was accepted as evidence for these proceedings.

On April 17, 2023, the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was sent to the Landlord, via email, on April 17, 2023. On the basis of the undisputed testimony of the Tenant, I find that these

documents were served to the Landlord, via email, on April 17, 2023, and they were accepted as evidence for these proceedings.

On April 18, 2023, the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was sent to the Landlord, via email, on April 18, 2023. On the basis of the undisputed testimony of the Tenant, I find that these documents were served to the Landlord, via email, on April 18, 2023, and they were accepted as evidence for these proceedings.

On April 19, 2023, the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was sent to the Landlord, via email, on April 19, 2023. On the basis of the undisputed testimony of the Tenant, I find that these documents were served to the Landlord, via email, on April 19, 2023, and they were accepted as evidence for these proceedings.

On May 04, 2023, the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was sent to the Landlord, via email, on April 17, 2023. On the basis of the undisputed testimony of the Tenant, I find that this evidence was served to the Landlord, via email, on April 17, 2023, and it was accepted as evidence for these proceedings.

The Tenant was given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The Tenant affirmed that she would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The Tenant was advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. She affirmed that she would not record any portion of these proceedings.

Preliminary Matter

At the hearing, the Tenant stated that the Landlord did not serve her with a Two, Four, or Twelve Notice to End Tenancy. As such, the Tenant's application for compensation for being served with a Two, Four, or Twelve Notice to End Tenancy is not being considered at these proceedings.

Issue(s) to be Decided:

Is the Tenant entitled to compensation because the Tenant was not able to move into the rental unit?

Background and Evidence:

The Tenant stated that:

- In June of 2022 she entered into an oral tenancy agreement with the Landlord;
- They agreed she could move into the rental unit on July 01, 2022;
- They agree the tenancy agreement would be for a fixed term of 3 months, after which it would continue on a month to month basis;
- She agreed to pay monthly rent of \$2,650.00;
- The Landlord asked her to pay for three month's rent, in advance;
- The Landlord initially asked her to pay a security deposit of \$2,650.00;
- The Landlord subsequently reduced the amount of the security deposit to \$1,325.00;
- On June 16, 2022, the Tenant sent the Landlord \$2,000.00 in partial payment for three month's rent;
- On June 20, 2022, the Tenant sent the Landlord another \$2,000.00 in partial payment for three month's rent;
- The Landlord never provided the keys to the rental unit;
- After a series of electronic communications regarding providing keys for the unit, on July 21, 2022 the Landlord sent the Tenant a message in which he informed her the tenancy would not continue;
- The Landlord did not return the \$4,000.00 the Tenant paid in June of 2022; and
- She was never able to move into the unit.

The Tenant is seeking compensation for accommodation costs for the period between July 12, 2022 to July 21, 2022. She stated that she is not seeking compensation for the period between July 01, 2022 and July 11, 2022 as she was able to remain in her previous home for that period.

The Tenant stated that she and her daughter flew to Toronto on July 22, 2022 so she is not seeking compensation for July 22, 2022 and July 23, 2022.

The Tenant stated that her daughter, who is a minor who lived with her, returned to the community on July 24, 2022, at which time she moved into the premises located on

Smithe Street. The Tenant stated that she returned to the community on August 01, 2022 or August 02, 2022, at which time she moved into the premises located on Smithe Street. The Tenant is seeking compensation for accommodation costs for the period between July 24, 2022 and September 01, 2022 for the premises located on Smithe.

The Tenant stated that she had difficulty finding a new rental unit because she did not wish to enter into a long term lease and most landlords were requesting a one year lease. She stated that she searched several popular websites but was unable to find suitable accommodations. She stated this Landlord had agreed to a fixed term of tenancy of three months, followed by a month-to-month tenancy.

The Tenant stated that she did not wish to enter into a long term lease because she was waiting for her new home to be finished and she did not know when she would be able to move into that new home. She stated that she moved into her new home on January 09, 2023. The Tenant is seeking compensation for accommodation costs in September, October, November, and December of 2022.

The Tenant is seeking compensation for parking, at a cost of \$35.00 per night, for the period between July 24, 2022 and August 01, 2022. The Tenant submitted a receipt to show that this was the daily cost of parking for that period.

The Tenant is seeking compensation for parking for August and September, in the amount of \$150.00 per month. She stated that she was able to rent a parking space for these months from a private individual. The Tenant submitted a bank statement which she stated shows that in two occasions she paid this individual \$150.00 by e-transfer.

The Tenant is seeking compensation of \$906.15 for housing her cats. She stated that she incurred this expense because she was not permitted to bring them to the hotel she stayed at in July of 2022 and she needed a place to stay while she was in Toronto. She stated that she would have been able to leave her cats in the rental unit while she was in Toronto, if the tenancy had commenced. The Tenant submitted a receipt for this expense.

The Tenant is seeking compensation for the cost of eating in restaurants, in the amount of \$241.22. The Tenant stated these costs were incurred while they were staying in the hotel, which did not have cooking facilities. The Tenant submitted a copy of a bank statement which indicates she paid this amount for meals in July of 2022.

The Tenant is seeking compensation of \$338.74 for storage costs. She stated that she planned on keeping some personal items at the rental unit; that there was not enough room for these personal items at the temporary accommodations she rented, so she kept them in a storage locker. The Landlord submitted evidence that she rented a storage locker on July 15, 2022, which cost \$126.84 per month.

The Tenant is seeking compensation of \$400.00 for a caregiver. She stated that she paid a third party \$400.00 to stay with her underage daughter for the latter part of July, as her daughter was not permitted to stay in the temporary accommodation without an adult. She stated that she paid this caregiver in cash and has no record of the payment.

The Tenant applied to recover costs for mailing documents.

Analysis:

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

On the basis of the undisputed evidence, I find that:

- The Landlord and the Tenant entered into an oral tenancy agreement, for a tenancy that was to begin on July 01, 2022;
- The Tenant agreed to pay monthly rent of \$2,650.00;
- In June of 2022, the Tenant paid the Landlord a total of \$4,000.00, which the Tenant believed was to be applied to rent for July, August, and September of 2022;
- The Landlord did not permit the Tenant to move into the rental unit; and
- The Landlord did not return the \$4,000.00 the Tenant paid in June of 2022.

Section 44(1)(a) of the *Residential Tenancy Act (Act)* identifies various methods by which a landlord may give a tenant notice to end a tenancy. On the basis of the undisputed evidence, I find that the Landlord did not serve the Tenant with notice to end the tenancy in accordance with any of the methods outlined in section 44(1)(a) of the *Act*. I find that the Landlord simply denied the Tenant access to the rental unit.

I find that the Landlord breached the terms of their oral tenancy agreement when he did not let the Tenant move into the unit on July 01, 2022. I therefore find that the Landlord must return the \$4,000.00 the Tenant paid to occupy the unit.

I find that the Landlord breached the *Act* when he did not end the tenancy in a manner that is authorized by the *Act*. I therefore find that the Landlord is obligated to compensate the Tenant for reasonable losses that flow from that breach.

Given that the Landlord did not clearly inform the Tenant that the tenancy was not continuing until July 21, 2022, I find it was reasonable for the Tenant to find alternate accommodations prior to July 21, 2022. I find it would have been unreasonable for the Tenant to enter into a tenancy agreement elsewhere until she had certainty that her agreement for this unit had ended. I therefore find that the Tenant is entitled to recover costs she incurred for accommodations for the period between July 01, 2022 and July 21, 2022.

As the Tenant left the community for a short period of time on July 22, 2022 and she did not return to the community until after July 31, 2022, I find it would have been difficult, if not impossible, for the Tenant to enter into a different tenancy agreement for her and her child, who is a minor, for any period in July. I therefore find that the Tenant is entitled to recover costs she incurred for accommodations for the period between July 22, 2022 and July 31, 2022.

As the Tenant did not return to the community until August 01, 2022 or August 02, 2022, I find that it would have been difficult for her to enter into a different tenancy for August of 2022. I find this to be particularly true because the Tenant did not wish to enter into a year long lease, and I am aware that many Landlords require a fixed term tenancy of at lease one year. I therefore find that the Tenant is entitled to recover costs she incurred for accommodations for August of 2022.

The Tenant submitted evidence to show that she incurred room costs of \$3,380.40 for the period between July 12, 2022 and July 22, 2022; \$5,050.00 for the period between July 24, 2022 and August 23, 2022; and \$1,280.00 for the period between August 23, 2022 and September 01, 2022, for a total of \$9,710.40. I find that the Tenant is entitled to compensation for these room costs, less the \$5,300.00 she would have paid in rent if she had moved into the rental unit. I therefore find that the Tenant is entitled to compensation of \$4,410.40 for accommodation costs for the period between July 12, 2022 and September 01, 2022.

On the basis of the testimony of the Tenant and the supporting documentary evidence, I find that she had to pay \$35.00 to park for the period between July 24, 2022 and August 01, 2022. I find that the Tenant may not have incurred these costs if she had been living in the rental unit for July and that she is entitled to recover for these parking expenses.

On the basis of the testimony of the Tenant and the supporting documentary evidence, I find that she had to pay \$150.00 to park in August of 2022. I find that the Tenant may not have incurred these costs if she had been living in the rental unit for August and that she is entitled to recover for these parking expenses.

On the basis of the testimony of the Tenant and the supporting documentary evidence, I find that she had to pay \$906.15 to house her cats in July of 2022. I find that the Tenant may not have incurred these costs if she had been living in the rental unit in July and that she is entitled to recover for these expenses.

The Tenant submitted evidence to show that she spent \$241.22 eating out in July of 2022. As the Tenant may not have incurred these costs if she had been living in the rental unit in July, I find that she is entitled to recover \$315.00 for these 9 days of parking.

Section 7(2) of the *Act* stipulates, in part, that a party who claims compensation for damage or loss that results from the other party's non-compliance with the *Act*, the regulations, or their tenancy agreement, must do whatever is reasonable to minimize the damage or loss. In these circumstances, I find that the Tenant has submitted insufficient evidence to show that she took reasonable steps to minimize her loss by finding alternate accommodation for any period August 31, 2022.

In the absence of evidence to the contrary, I find that the Tenant hired a caregiver to stay with her daughter in late July of 2022, because her daughter was not permitted to stay in the temporary accommodation without an adult. I find that this is likely not an expense that the Tenant would have incurred if the tenancy had proceeded. In addition to establishing that a tenant experienced a loss, a tenant must also accurately establish the amount of the loss whenever compensation for damages is being claimed. In these circumstances, I find that the Tenant failed to establish the true cost of hiring a caregiver. When receipts or written statements from a payee are available, or could be available with reasonable diligence, I find that a party seeking compensation for those

expenses has a duty to present that evidence. In the absence of such evidence, I find that the Tenant failed to establish the true cost of hiring a caregiver and I dismiss the claim for \$400.00.

On the basis of the testimony of the Tenant and the supporting documentary evidence, I find that she paid \$63.42 for storage costs for July of 2022 and \$126.84 for storage costs for August of 2022. I find that she incurred these costs because she needed to store personal items that would have been stored at the rental unit if the tenancy had commenced. I therefore find that she is entitled to recover for these expenses.

While I accept the Tenant's submission that it is more difficult to find a month-to-month tenancy, as many landlords prefer a lease of one year, I am fully aware that month-to-month tenancies are available. Although the Tenant testified that she searched several popular websites for suitable tenancies, she submitted insufficient evidence to establish the extent of her search. I therefore find it entirely possible that she was unable to find suitable accommodations for any period after August 31, 2022 because she did not search diligently. In the absence of evidence that the Tenant searched diligently for alternate accommodations, I find that the Tenant has not established that she properly mitigated her losses. I therefore dismiss the Tenant's application for compensation for any losses that occurred after August 31, 2022, which includes compensation for accommodation, parking, and storage.

The dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of *Act*. With the exception of compensation for filing the Application for Dispute Resolution, the *Act* does not allow an Applicant to claim compensation for costs associated with participating in the dispute resolution process. I therefore dismiss the application to recover mailing costs.

I find that the Tenant's Application for Dispute Resolution has merit and that the Tenant is entitled to recover the fee paid to file this Application.

Conclusion:

The Tenant has established a monetary claim of \$10,313.04, which includes a return of the \$4,000.00 she paid in rent, \$4,410.40 for accommodation costs incurred between July 12, 2022 and September 01, 2022, \$241.22 for meals, \$465.00 for parking, \$906.16 for housing cats, \$190.26 for storage, \$100.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that

amount. In the event that the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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

Dated: May 06, 2023

Residential Tenancy Branch