



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OLC, FFT

The Tenant made their application to the Residential Tenancy Branch on March 10, 2023. They seek the Landlord's compliance with the legislation and/or the tenancy agreement. They also seek reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "Act") on June 15, 2023. The Tenant attended the hearing; the Landlord did not attend.

Preliminary Matter –service of Notice of Dispute Resolution Proceeding to Landlord

The Tenant attended the hearing, and I provided them the opportunity to present oral testimony and make submissions during the hearing.

To proceed with this hearing, I must be satisfied that the Tenant made reasonable attempts to serve the Landlord with the Notice of Dispute Resolution Proceeding for this hearing. This means the Tenant must provide proof that they served the document at a verified address allowed under s. 89 of the *Act*, and I must accept that evidence.

The Tenant in the hearing set out that they sent registered mail to the Landlord's business address on March 13, 2023. This was the address as set out on the tenancy agreement the Tenant signed with the Landlord on September 12, 2022. The Tenant conferred with a property manager to confirm this business address. The Tenant confirmed they had visited this address previously, thereby confirming the postal address was correct.

Based on the Tenant's description of their service to the Landlord, with reference in the form of a registered mail tracking number, I am satisfied they notified the Landlord about this hearing, and within the prescribed timeline, as set in s. 59(3) of the *Act*. The Tenant's manner of service complied with s. 89(1)(c) of the *Act*. I find the Tenant

notified the Landlord about the hearing as required; therefore, the hearing proceeded in the Landlord's absence.

The Tenant set out that they provided their evidence to the Landlord via the property manager they interacted with in regard to the matter of this tenancy. They relied on that property manager to forward that material to the Landlord, and queried in the hearing whether this would be sufficient.

I find the Tenant forwarding their evidence to the Landlord in this manner, as they described in the hearing, is not sufficient for the purposes of evidence needing to be on the record in this administrative tribunal setting. It is a fundamental principle of administrative fairness that a party have access to the evidence to which they may respond. I find this was an indirect method of service, and the Tenant did not ensure the material arrived to the Landlord. Without the Landlord present to confirm this, I cannot refer to this material in their absence. I exclude the material from consideration for this reason, and a large part of what the Tenant submitted in the hearing was evidence in the form of affirmed testimony.

Issues to be Decided

- Is the Landlord obligated to comply with the *Act* and/or the tenancy agreement?
- Is the Tenant entitled to reimbursement of the Application filing fee?

Background and Evidence

The Tenant presented a copy of the tenancy agreement they signed with the Landlord on September 12, 2022. This was with the property manager on the Landlord's behalf. This agreement shows the Tenant paid an "approval fee" for their pet at \$362.50.

The tenancy agreement does not contain a date for the start of the tenancy. It provides for the rent amount of \$1,450 payable on the first day of each month.

In another record they provided with their Application to the Residential Tenancy Branch, the Tenant provided a copy of a receipt for the amount of \$725. This was for the security deposit they paid to the Landlord's representative on September 23, 2022.

The Tenant had time in the hearing to explain the matter. They listed the following points:

- in 2022 they were seeking a new living arrangement, and they worked with a property manager
- at the outset the property manager told them it would be a month or two before moving in, and this date “kept being pushed back”
- the property manager informed the Tenant, on January 1, 2023, that they were still not able to move into the rental unit because the Landlord was waiting for occupancy permits at the rental unit property
- on January 5, 2023 the Tenant moved their personal property into the rental unit
- by the end of February, the property manager informed the Tenant that the Landlord put the rental unit property up for sale
- on February 28, 2023 the Tenant spoke to a contractor at the rental unit property, who informed the Tenant that they needed to enter the unit for maintenance – this contractor informed the Tenant that they would move the Tenant’s property into another unit for 5 days
- on March 1, 2023 the Tenant visited the rental unit property, and workers at the property informed the Tenant that the Landlord and a contractor were having an argument about the Tenant
- a contractor informed the Tenant that they need to move their things out from the rental unit property right at that time – the Tenant ended up keeping the key for their rental unit, and in the Tenant’s estimation this meant they had occupancy of the rental unit. The property manager with whom the Tenant signed the agreement and interacted with said this move to evict the Tenant in this manner was illegal.
- on March 4, the Tenant moved their personal property out from the rental unit property and left the rental unit key in the rental unit – as stated by the Tenant in the hearing, the property manager told them: “You didn’t have to do this.” (*i.e.*, return the key based only on being told to remove personal property items).

In the hearing, the Tenant confirmed that they did not ever pay rent. They were going to pay rent when they eventually moved into the rental unit; however, that date for their actual occupancy never arrived. The Tenant stayed at a friend’s place; however, by November through to January they had to stay at Airbnb arrangements, at their own expense.

The Tenant was aware that BC Housing had purchased the building in March 2023. BC Housing informed the Tenant directly that they could not speak to the Tenant; evidently,

the contractor was not supposed to tell the Tenant of BC Housing's acquisition of the rental unit property. At one point, the Tenant spoke to local news about the matter.

The Tenant received a refund on their deposit. At the time of the hearing, they had their own residence secured.

The Tenant stressed that the extra accommodation, such as Airbnb, cost them "so much money", and this was necessitated by their inability to move into the rental unit.

Analysis

I find a tenancy was in place between the parties. The tenancy agreement provided by the Tenant as evidence for this hearing stands as proof of that.

The basic components of a contract are an offer, acceptance, consideration, and capacity. A contract is not formed until both parties accept the offer of the contract and consideration (such as a payment of some kind, or exchange of contractual promise) is made.

I find that when the Landlord – via their agent – signed the contract with the Tenant on September 12, 2022, they accepted the Tenant's offer fully, and intended to begin a contractual arrangement. The process of forming a contract was completed when the Tenant paid a security deposit on September 23, 2022.

As set in s. 1 of the *Act*, "tenancy agreement" means

an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a license to occupy a rental unit

I find the parties entered into a tenancy agreement. That means the *Act* applied to the landlord-tenant relationship from that moment forward. As set out in the *Act* s. 16:

The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

In this situation, the contract was formed when both parties accepted the offer of the contract, and consideration was in place when the Tenant paid a security deposit on

September 23, 2022. Even though the Tenant did not occupy the rental unit, the rights and obligations of the reciprocal parties to the agreement were in effect.

The *Act* applied to that tenancy, and the only legal, valid way the Landlord could end the tenancy from that point forward was from Division 1, *i.e.*, sections 44 through 53 of the *Act*. From what the Tenant described under affirmed oath in the hearing, I find the Landlord did not end the tenancy in a legally valid manner as required by the *Act*.

By the Tenant vacating the rental unit with their return of the key on March 4, 2023, the Tenant effectively ended the tenancy, as per s. 44(1)(d) of the *Act*. I find the Tenant credible on their testimony, minus evidence to the contrary, that they were instructed to remove their personal property from the rental unit property on March 1, 2023.

Given that the tenancy ended, there is no continuing landlord-tenant relationship. The Landlord's compliance with the *Act* or the tenancy agreement is no longer in issue.

The Tenant made no other application to the Residential Tenancy Branch and only asked for clarification on whether a tenancy was in place. As set out above, I find that a tenancy was in place. The Landlord initiated an end to the tenancy in a manner that was not in compliance with the *Act*, and this impacted the Tenant's rights, effectively forcing the Tenant to return the key, as described by the Tenant in the hearing.

I find the Tenant was successful in this Application; therefore, I grant reimbursement of the Application filing fee.

Conclusion

As set out above, I find there is no existing landlord-tenant relationship. I find the Tenant was successful in this Application, to show positively that the *Act* applied to the relationship between the parties as it then was.

Pursuant to s. 72 of the *Act*, I grant a Monetary Order to the Tenant for the recovery of the filing fee they paid for this Application. I provide the Tenant with this Monetary Order the Tenant must this Monetary Order to the Landlord as soon as possible. Should the Landlord fail to comply with this Monetary Order, the Tenant may file this Monetary Order in the Small Claims Division of the Provincial Court where it will be enforced as an Order of that Court.

I make this decision on the authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: June 26, 2023

Residential Tenancy Branch