



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Code MNDCT, MNETC, FFT

Introduction

This hearing was scheduled pursuant to an Application for Review Consideration made by the Tenant on December 16, 2022. The Tenant applied for the following relief, pursuant to the Residential Tenancy Act (the Act):

- an order granting compensation for monetary loss or other money owed;
- compensation related to a Two Month Notice to End Tenancy for Landlord's Use of Property; and
- an order granting the filing fee.

During the hearing, it became apparent that the Tenant was not seeking compensation related to a Two Month Notice to End Tenancy for Landlord's Use of Property (MNETC). Rather, the Tenant was seeking compensation related to the timing and manner of the end of the tenancy. The hearing proceeded on that basis.

The Tenant attended the hearing on his own behalf. The Landlord attended the hearing and was assisted by AL, her spouse. All in attendance provided a solemn affirmation.

The Tenant testified the Notice of Dispute Resolution Proceeding package was served on the Landlord by registered mail. AL acknowledged receipt on behalf of the Landlord. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the Act, I find the above documents were sufficiently served for the purposes of the Act.

On behalf of the Landlord, AL testified the documentary evidence to be relied upon was served on the Tenant by registered mail on August 21, 2023. AL advised that these documents were sent to the addresses for service provided on the Notice of Dispute Resolution Proceeding. Copies of Canada Post registered mail receipts which included the date and time of service were submitted in support. I find I am satisfied the Landlord's evidence was served on the Tenant to the addresses for service provided on the Notice of Dispute Resolution Proceeding. Pursuant to sections 88 and 90 of the Act, documents served by registered mail are deemed to have been received five days later. Therefore, despite the Tenant's denial that these documents were received, I find they are deemed to have been received by the Tenant on August 26, 2023, five days after they were mailed.

The parties were provided with a full opportunity to present evidence orally and in written and documentary form as appropriate, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to an order granting compensation for monetary loss or other money owed?
2. Is the Tenant entitled to an order granting the filing fee?

Background and Evidence

The parties agreed the fixed term tenancy began on January 1, 2023, and was expected to continue to December 31, 2023. The parties agreed rent of \$2,300.00 per month was to be due on the first day of each month. The Tenant paid a security deposit of \$1,150.00 and a pet damage deposit of \$1,150.00, both of which were returned to the Tenant. A copy of the tenancy agreement, signed by the parties on December 5, 2022, was submitted into evidence.

The Tenant testified that on December 8, 2022, the Landlord sent him a text message purporting to rescind the tenancy agreement which stated, in part:

We decided to rescind your tenancy at [the rental unit address] after reviewing the credit check. You will receive your deposit totalling \$2,300 to your email through Interac. We wish you best of luck in finding another place.

On behalf of the Landlord, AL acknowledged that the tenancy ended in this manner.

First, the Tenant claims \$560.00 for the cost of legal services obtained in relation to the termination of the tenancy agreement. Specifically, the Tenant testified that this was incurred for a legal opinion and for correspondence to the Landlord. A copy the letter to the Landlord, dated December 21, 2022, and a copy of a legal invoice, dated August 21, 2023, were submitted into evidence.

In reply, AL referred to a Guide to the Dispute Resolution Process, available on the Residential Tenancy Branch website, which states the following with respect to representation by a lawyer:

Although the Dispute Resolution process is designed so that legal representation is not necessary for most disputes, a party may be represented by a lawyer. Those arrangements must be made in advance and it is up to the party wishing to be represented to find their own agent, lawyer, advocate, or interpreter. The party is solely responsible for paying the costs to be represented.

Second, the Tenant claims \$2,300.00 pursuant to a clause in an amendment signed and dated December 5, 2022, which states:

...if the landlord wishes to end the contract early, the landlord agrees to give the tenant a minimum of two months of notice in writing and give one month of free rent (or \$2,300 equivalent) as penalty.

In reply, AL submitted that the clause relied upon was a liquidated damages clause. As the amendment document refers to the payment of \$2,300.00 as a penalty, it is unenforceable. AL also submitted that the tenancy did not begin until January 1, 2023, as per the tenancy agreement.

Finally, the Tenant seeks to recover the \$100.00 filing fee paid to make the application.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 67 of the Act empowers the director to order one party to pay compensation to the other if damage or loss results from a party not complying with the Act, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden of proving their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the Act. An applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss because of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss

In this case, the burden of proof is on the Tenant to prove the existence of the damage or loss, and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Tenant did what was reasonable to minimize the damage or losses that were incurred.

Section 16 of the Act confirms that the rights and obligations of a landlord and tenant take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit. In this case, I find the parties entered into a tenancy agreement on December 5, 2022, and that the rights and obligations of the Landlord and the Tenant took effect on that date. As a result, the Landlord could only end the tenancy in accordance with the Act. Ending a tenancy agreement due to new information discovered after a tenancy agreement is entered into – in this case, the results of a credit check – is not a valid reason for ending the tenancy under the Act.

With respect to the Tenants' claim for \$560.00 in recovery of legal fees, I find the Tenant is not entitled to the relief sought. Although the document referred to by AL is not determinative, I agree that parties who choose to seek a legal opinion or retain legal representation should bear those costs. The dispute resolution process is intended to be accessible to self-represented participants and, indirectly, to avoid claims for legal costs which may exceed the amount of the claim. This aspect of the Tenant's application is dismissed.

With respect to the Tenant's claim for \$2,300.00 as compensation pursuant to the amendment document submitted, I find the Tenant is not entitled to the relief sought. While I accept that the Landlord breached the Act by ending the tenancy before the Tenant moved in, the clause in question was clearly drafted with consideration for the obligations a landlord has to a tenant when issuing a notice to end tenancy for landlord's use of property under section 49 of the Act. However, the Landlord did not issue a notice to end tenancy under section 49 of the Act. Rather, I find that this clause is intended to avoid or contract out of the Act and the Regulations, which is not permitted under section 5 of the Act. Therefore, the clause is of no effect. This aspect of the Tenant's application is dismissed.

However, Policy Guideline #16 provides that nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right. In this case, I am satisfied there was an infraction of a legal right when the Landlord terminated the tenancy agreement unilaterally after the tenancy agreement was signed. Although I have found the Tenant is not entitled to the relief sought, I find it appropriate in the circumstances to grant \$100.00 to the Tenant as nominal damages.

As the Tenant was not successful with respect to the substantive issues in the application, I decline to grant recovery of the filing fee to the Tenant.

Conclusion

The Tenant is granted a monetary order for \$100.00 as nominal damages. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 14, 2023

Residential Tenancy Branch