



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: OLC

Landlord: OPB OPM MNDC MNSD FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on September 7, 2023.

The Landlord and the Tenant were both at the hearing and provided affirmed testimony. Both sides confirmed receipt of each other's documentary evidence and Notice of Hearing packages.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

Both parties agree that the tenancy is now over. As such, I find all the issues on both applications are now moot, with the exception of the landlord's application for monetary compensation.

Issues to be Decided

- Is the Landlord entitled to a monetary order for damage to the unit or for damage or loss under the Act?
- Is the Landlord authorized to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38?

Background and Evidence

Both parties agree that the tenancy started on June 1, 2021, and ended on July 31, 2023, the date the tenant moved out.

Copies of the two fixed term tenancy agreements were provided into evidence, alongside the concurrently signed mutual agreements to end tenancy. The first fixed term tenancy agreement spanned from June 1, 2021, until May 30, 2022, and at the same time this agreement was signed, the parties signed a mutual agreement to end tenancy, effective the last date of the fixed term tenancy agreement. Then, the parties entered into a second fixed term tenancy agreement, starting June 1, 2022, ending May 30, 2023. Also, a second mutual agreement to end tenancy was signed at the same time that second tenancy agreement was signed.

The Landlord is seeking monetary compensation for the following items:

- 1) \$100.00 – Filing fee
- 2) \$332.59 – Translation fees

The Landlord stated that they had to pay some fees to have some of the Tenant's documents translated, which they are wanting to have reimbursed.

The Tenant does not feel she should have to pay for this.

- 3) \$15,258.50 – UBC residence fee
- 4) \$16,957.50 – Living allowance

The Landlord stated that these two amounts are for her two daughters to live in their own rental units for the remainder of the year. The Landlord stated that the plan was to sell both this unit, and her house where she currently resides, so that a separate residence can be purchased closer to the university campus. The Landlord asserts that they were unable to sell this rental unit, or their house, because the Tenant failed to move out as she agreed (as per the fixed term tenancy agreement, and as per the mutual agreement to end tenancy).

The Tenant stated that the Landlord could have sold the unit with her living in it, and she should not be liable for this amount. The Tenant also pointed out that the Landlord failed to fill out the relevant portions of the tenancy agreement, should they want the tenancy to end by way of the fixed term vacate clause (section E was not filled in on the tenancy

agreement). Further, the Tenant also provided submissions speaking to her opinion that the Landlord has contracted outside the Act by using a series of mutual agreements signed at the same time the fixed term tenancy agreement was signed, to avoid responsibility and rights under the Act.

Analysis

Section 44 of the *Act* states that a tenancy ends if the tenancy agreement is a fixed term tenancy agreement that, in the circumstances prescribed under section 97(2)(a.1), requires the tenant to vacate the rental unit at the end of the term. Section 97(2)(a.1) states that the Lieutenant Governor in Council may make regulations prescribing the circumstances in which a landlord may include in a fixed term tenancy agreement a requirement that the tenant vacate a rental unit at the end of the term. Section 13.1 of the regulations states that for the purposes of section 97(2)(a.1) of the Act, a landlord may include in a fixed term tenancy agreement a requirement that the tenant vacate the rental unit at the end of the term if that landlord is an individual, and that landlord or a close family member of that landlord intends in good faith at the time of entering into the tenancy agreement to occupy the rental unit at the end of the term.

In this case, I note the most recent tenancy agreement was signed on April 9, 2022. It was set to run from June 1, 2022, to May 30, 2023. This is clearly laid out under section 2C of the tenancy agreement. However, I also note that if using section 2C, the Landlord must also select either option D or E. If the Landlord wanted to end the tenancy and obtain an order of possession in this manner, they would have had to fill out section E of the tenancy agreement, and have the Tenant sign this part. The Landlord would also have to comply with the regulations on this matter. In any event, I find the Landlord failed to properly complete the relevant portions of the tenancy agreement, and I find the Tenant was under no obligation to move out at the end of her fixed term, which lapsed on May 30, 2023.

Next, I turn to the mutual agreement that was signed. I note that section 44 of the Act allows for a tenancy to end by mutual agreement of the parties to the tenancy as long as the agreement is in writing. However, I also note the following portion of the Act:

This Act cannot be avoided

5 (1)Landlords and tenants may not avoid or contract out of this Act or the regulations.

(2)Any attempt to avoid or contract out of this Act or the regulations is of no effect.

I have considered the testimony, submissions, and evidence on this matter. I note the parties initially signed a fixed term tenancy spanning from June 1, 2021, to May 20, 2022. At the time of signing that agreement, the parties signed a mutual agreement to end tenancy effective May 30, 2022. Then, the parties again signed a second fixed term tenancy agreement spanning from June 1, 2022, to May 30, 2023. Also, the parties again signed a mutual agreement to end tenancy effective May 30, 2023. I note the parties signed a mutual agreement to end tenancy for each year on the same day they signed their new fixed term tenancy agreement.

I note the rules and regulations have recently been bolstered regarding the use of fixed term tenancy agreements, with vacate clauses. This was done to protect tenants from the improper use of fixed term tenancy agreements. It is unconventional that the Landlord would insist on the Tenant signing a mutual agreement to end tenancy the same day they renew their lease for the year. I find this amounts to a nullification of important provisions of the legislation, which are in place to protect tenants. I find that in requiring the Tenant to sign a mutual agreement to end tenancy at the same time they enter into the fixed term tenancy agreement, that this is an attempt to contract out of the Act, contrary to section 5 of the Act, and to circumvent the rules surrounding fixed term tenancies with vacate clauses. I find the fixed term tenancy agreement, and the potential vacate clause, as well as the concurrently signed mutual agreement to end tenancy is of no force or effect.

With respect to the Landlord's request for monetary compensation, I find the Landlord has failed to sufficiently demonstrate that the Tenant ought to be liable for translation costs. I find this is a cost of doing business, and I also note costs related to preparing for this dispute are not recoverable under the Act. I dismiss this item in full.

With respect to the Landlord's request to be reimbursed for her daughters' living accommodation for the year, I do not find her arguments make sense. The Landlord stated that she wanted to sell her house, and this rental unit so that she could buy a new place closer to the university. The Landlord stated that she could not sell the rental unit because the Tenant hadn't moved out. However, this is not correct. A rental unit can be sold, while it is tenanted. I do not find this prevented the Landlord from selling. Further, the Tenant was under no obligation to move out, and should not be liable for the costs incurred to house her daughters. I dismiss these items, in full.

The Landlord's application is dismissed in full, without leave to reapply. The Landlord must return the security deposit. The total that should be returned is \$1317.37 based on the \$17.37 of interest that is owed on the deposit.

Conclusion

The Landlord's application is dismissed, in full, without leave.

The Tenant is granted a monetary order in the amount of **\$1,317.37**. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be 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 *Residential Tenancy Act*.

Dated: September 8, 2023

Residential Tenancy Branch