



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, OLC, FFT

Introduction

The Tenant filed their Application for Dispute Resolution (the “Application”) on May 23, 2023. They seek compensation for monetary loss/other money owed, the Landlord’s compliance with the tenancy agreement/*Act*, and reimbursement of the Application filing fee.

The matter proceeded by hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on September 14, 2023.

Both the Tenant and the Landlord attended the conference call hearing. I explained the process, and both had the opportunity to ask questions and present affirmed testimony during the hearing. Both the Landlord and the Tenant confirmed they received the prepared documentary evidence of the other.

Preliminary Matter – tenancy ended

The Tenant made this Application on May 23, 2023 and moved out from the rental unit by May 31, 2023.

While the Tenant at the time of an existing tenancy applied for the Landlord’s compliance with the *Act*/tenancy agreement, the tenancy and the landlord-tenant relationship has now ended. It is not possible to make an order for the Landlord to comply with legislation/tenancy agreement going forward.

Where relevant, I consider any violation of the *Act*/tenancy agreement, as submitted by the Tenant, in this decision on the issues below. Otherwise, I dismiss this issue from the Tenant's Application, without leave to reapply.

Issues to be Decided

Is the Tenant entitled to compensation for monetary loss or other money owed, pursuant to s. 67 of the *Act*?

Is the Tenant eligible for reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

In the hearing I confirmed the basic information about the tenancy agreement that was in place between the parties. The Tenant submitted a copy of images of 2 pages of the agreement. The document shows the tenancy started on June 1, 2022, with the agreement continuing on a month-to-month basis after the initial fixed-year term. The rent amount was \$3,000 per month.

In the hearing the Tenant described signing a different tenancy agreement on May 15. They moved out from the rental unit on June 1, 2023. The Landlord specified that the tenancy agreement ended on May 31, 2023. The Tenant removed their private property from the rental unit on May 21.

The Tenant provided a record that they paid the \$3,000 full amount of rent to the Landlord for May 2023.

The Tenant provided a copy of the Landlord's handwritten letter to them, dated April 25, 2023. The Tenant stated that this was the Landlord presenting to the Tenant that they had until April 30, 2023 to either choose to stay or move out. The Tenant presented that they tried to speak to the Landlord about this; however, the Landlord refused to speak, was not available by phone, and had taped their own mail slot shut preventing the Tenant from providing written queries.

As it appears in the evidence, the Landlord's letter contains the following passages (reproduced word-for-word):

Letting you know that since I'm in a desperate need of a bedroom for myself, and also of storage space for my belongings, I decided that soon after your lease expires on May 31, 2023 I then as soon as possible will be starting to do some renovations downstairs that will including altering the laundry room. I then will be using most of the space in the laundry room and some in the garage to store some of my belongings.

It is only out of great consideration and not out of any obligation that I decided to not raise your rent by 2% as I'm allowed to, but to also reduce your rent to \$2,900.00 per month. This will amount to a substantial savings.

If the two of you are happy, satisfied and wish to continue renting [the rental unit] . . . that now will include a new six month lease with an addendum attached that will include the above and a few other rather small changes, please let me know in writing no later than April 30, 2023.

. . . Your six post-dated cheques in the above amount of \$2,900 will be required.

If on the other hand you feel that a two bedroom suite would be more suitable and more affordable, I then request that you provide me with a written moving out notice no later than April 30, 2023.

The Tenant responded with a letter, not in the evidence, wherein they explained that they would be moving out at the end of the tenancy agreement, *i.e.*, May 31. The Tenant in the hearing recalled that their response to the Landlord's April 28 letter was either on the same day, or the next day. The Tenant paraphrased their letter stated, basically, to the Landlord: "this is illegal" and "you're incompetent as a landlord".

The Tenant described being "blindsided" by the Landlord's April 28 letter. This meant they had to rush to organize a move, and their stress was compounded by the Landlord not communicating with them on this issue of the tenancy ending.

The Tenant's Application for compensation is for the full rent amount for May 2023 (\$3,000), as well as their moving expenses (\$630.13). The Tenant provided a record that they paid the \$3,000 full amount of rent to the Landlord for May 2023. The Tenant also provided an invoice to a moving company dated May 21, 2023.

In a written statement submitted for this hearing the Landlord stated they "never evicted either of the above two applicants" and "since it was the applicants' choice to move out when their lease was to expire on May 31, 2023. . . I should not be held responsible for either their moving cost or the \$3,000 for rent."

In describing their April 28 letter to the Tenant, the Landlord stated they were trying to be nice and give the Tenant options they could choose from. The Landlord stated "I

would have gone to a month-to-month basis.” From the Landlord’s perspective, they were wanting to work with the Tenant, but “the Tenant was harassing” them, through statements such as (paraphrased): ‘you can pay \$3,600 now, or we can go through the courts’.

Analysis

The Act s. 5 provides for the following:

- (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.

The tenancy agreement, in the image submitted by the Tenant for this hearing, notes that the tenancy would continue on a month-to-month basis after the expiry of the one-year fixed term. The Tenant’s evidence was a cut-off two-page piece of the whole agreement; I find this was the copy that was present when the Landlord met with the Tenant to conduct an inspection of the rental unit after the Tenant had filed the Application to the Residential Tenancy Branch.

I accept the Landlord’s statement in the hearing they provided a copy of the agreement to the Tenant at the start of the tenancy. I find this is borne out by the notation on the image submitted by the Tenant, noting “previously given” – I find there is no other reason for that notation to be present on the referred to copy unless it were true in fact, on a balance of probabilities.

What was in place was the Landlord’s statement to the Tenant, from the April 25 letter: “if you wish to continue renting [the rental unit] . . . that now will include a new six-month lease.” I find this was an attempt by the Landlord at offering a more suitable arrangement for the Tenant – in the Landlord’s mind – and does not override or otherwise negate what was in place in the original agreement, *i.e.*, a continuation of the tenancy on a month-to-month basis. There was no other indication in the agreement that I find was in the Tenant’s possession since the start of the tenancy. There was no indication in the agreement that the tenancy would end, and the Tenant had to vacate the rental unit.

In sum, I find the Landlord’s offer did not cancel or end the existing contract between the parties. The Tenant did not accept the Landlord’s offer of a fresh new tenancy agreement.

I find the Tenant had the opportunity to communicate with the Landlord; however, I give weight to the Landlord's statement that the communication from the Tenant was accusatory, and even threatening. The Tenant did not provide a record of their own correspondence in reply to the Landlord in the evidence; however, I find as fact the tone was not helpful, where the Tenant, perhaps thinking they were being direct, instead used terms such as 'basically this is illegal' and 'you're incompetent as a landlord'. As well, there were other issues causing tension, such as the availability of laundry facilities that were exacerbating the conflict.

Without a separate signed agreement in place, as offered by the Landlord but not accepted by the Tenant, there was no change to the existing tenancy agreement. I accept that the Tenant identified what the Landlord proposed as "illegal", meaning they were less likely in fact to accept the offer, and instead chose to move out.

It was the Tenant's choice to move out from the rental unit. I don't accept that, quite simply, they were offered a six-month term agreement, or forced to move out. I find the Landlord also in their April 25 letter asked for a letter from the Tenant confirming that they chose to end the tenancy. I don't see that request from the Landlord as avoiding what the *Act* or the original tenancy agreement provided for.

I find the Tenant had the opportunity to clarify the situation with the Landlord; however, I find as fact based on the testimony in the hearing that they did not do so in a civil manner. The Tenant did not present that they sought clarification from other resources or qualified the status of their legal rights as tenants in this situation. I find it was the Tenant's choice to end the tenancy as they did in these circumstances.

I find the Tenant chose on their own to end the tenancy and move out from the rental unit on May 27. The Tenant was not illegally evicted, or evicted by the Landlord under false pretences as they allege. I grant no reimbursement for the cost of movers, as claimed, because there was no breach of the *Act* or the tenancy agreement by the Landlord.

I understand the Tenant is claiming the full amount of rent for the month of May because of the stress induced by having to move out from the rental unit. The Landlord did not end the tenancy, and the Tenant was not evicted. I find there was no breach of the *Act* or the tenancy agreement by the Landlord; therefore, I find the Landlord is responsible for any compensation to the Tenant.

For these reasons, I dismiss the Tenant's claim for compensation, without leave to reapply. The Tenant was not successful in this hearing; therefore, I grant no reimbursement of the Application filing fee.

Conclusion

In line with my findings above, I dismiss the Tenant's Application in its entirety, without leave to reapply.

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: September 27, 2023

Residential Tenancy Branch