



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with a tenants' Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act") for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee under the Act.

The tenant DP ("tenant"), the tenants' legal counsel ("tenants' counsel"), landlord agent EL ("agent") and the landlords' legal counsel ("landlords' counsel") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally and in documentary form prior to the hearing. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

Preliminary and Procedural Matters

At the outset of the hearing, once the parties were advised that I would not be considering the tenants' amendment increasing the monetary claim from \$5,300.00 to \$67,700.00 and of which the amendment was filed late and served late contrary to the Residential Tenancy Branch Rules of Procedure ("Rules"), the tenants' legal counsel requested an adjournment so the tenants could serve the amendment to the landlords. The criteria for granting an adjournment are set out in the Rules. The criteria that apply are:

1. the views of the parties;
2. whether the purpose for which the adjournment is sought will contribute to the resolution of the matter in accordance with the objectives set out in Rule 1. Rule 1 notes that the objectives of the Rules of Procedure are to secure a consistent, efficient and just process for resolving disputes;

3. whether the adjournment is required to provide a fair opportunity to be heard, including whether a party has sufficient notice of the hearing;
4. the degree in which the need for an adjournment arises out of the intentional actions or the neglect of a party seeking the adjournment; the possible prejudice to each party.

The request of the ~~landlords'~~ **tenants'** counsel was denied as I find the adjournment to increase the monetary claim would prejudice the ~~tenants~~**landlords** as the amount is a significant increase from the application served upon the ~~tenants~~**landlords**.

Subsequently, the tenant then requested to withdraw their claim in full so that the tenants could reapply. Although the landlords' counsel originally had agreed to permit the tenants to withdraw their application, the tenant then proceeded to ask several questions and in response, the landlords' counsel stated they were no longer in support of the tenants' request to withdraw their application and that they wanted the hearing to proceed as the landlords were ready to proceed and had made preparations for the hearing. Rule 5 sets out the requirements for withdrawing an application. As the tenants failed to withdraw their application before the teleconference hearing or notify the other party with written notice of the withdrawal of their application, I have considered the landlords' counsel final decision to deny the request of the tenant during the hearing to withdraw their application. Therefore, the request to withdraw the tenants' application was denied and the hearing proceeded with the original claim as submitted. **In addition, the parties were advised during the hearing that Rule 2.9 of the Rules states as follows:**

2.9 No divided claims

An applicant may not divide a claim.

As a result, should the tenants attempt to reapply for any portion of the original application before me or the late attempt to amend their application which was not permitted, as was the tenants' request to withdraw a portion of their claim, the landlords may use this decision as evidence in any future hearing that I explained Rule 2.9 to the parties.

The parties confirmed their email addresses during the hearing. The parties confirmed their understanding that the decision would be emailed to the parties.

Issues to be Decided

- Are the tenants entitled to a monetary order for money owed or compensation under the *Act*, regulation or tenancy agreement, and if so, in what amount?

- Are the tenants entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on March 1, 2015 and was scheduled to end on February 28, 2018. Monthly rent of \$5,200.00 was due on the first day of each month.

The tenants claim of \$5,300.00 is comprised of \$5,200.00 for compensation for February 2018 rent due to a 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice") being served on the tenants by the landlord. The parties agreed that the 2 Month Notice was not disputed by the tenants and included an effective vacancy date of February 28, 2018 which was the same end date as the fixed-term tenancy agreement.

The tenants served a 10 Day Notice to end the tenancy early dated January 22, 2018 with an effective vacancy date of January 31, 2018. There is no dispute that an agent was served on January 22, 2018 with the tenants' 10 Day Notice to end the tenancy earlier. The landlords' counsel argued that the *Act* does not allow the tenants to give early notice to end a tenancy earlier for a fixed-term tenancy and that the earliest the tenancy could end was on February 28, 2018 which was the effective vacancy date listed on the 2 Month Notice.

The position of the tenants is that by giving their 10 Day Notice dated effective January 31, 2018, that they should be compensated \$5,200.00 for February 2018 rent, plus the \$100.00 filing fee.

The landlords argue that by returning the rent cheque for February 2018 rent and given that the *Act* does not permit ending a tenancy earlier than the end of the fixed-term tenancy that the tenants have already been compensated for February 2018 rent and are not entitled to additional compensation.

Analysis

Based on the documentary evidence and the undisputed testimony provided during the hearing, and on the balance of probabilities, I find the following.

Firstly, section 51 of the *Act* states:

Tenant's claim for compensation –

Tenant's compensation: section 49 notice

51 (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of **one month's rent payable under the tenancy agreement.**

[My emphasis added]

Based on the above, I find the landlords returned the February 2018 rent cheque which was confirmed by the tenant during the hearing. Therefore, the compensation for the one month's rent payable under the tenancy agreement was paid by the landlord returning the tenant's rent cheque for February 2018 versus cashing the tenant's cheque for February 2018 rent.

I will now deal with the tenants' claim related to compensation for having provided early notice to vacate once they were served with a 2 Month Notice. The tenants served a 10 Day Notice to end the tenancy early dated January 22, 2018 with an effective vacancy date of January 31, 2018. There is no dispute that an agent was served on January 22, 2018 with the tenants' 10 Day Notice to end the tenancy earlier. I agree with the argument raised by the landlords' counsel that the *Act* does not allow the tenants to give early notice to end a tenancy earlier for a fixed-term tenancy in this instance and that the earliest the tenancy could end was on February 28, 2018, which was the effective vacancy date listed on the 2 Month Notice. Section 50 of the *Act* applies and states:

Tenant may end tenancy early following notice under certain sections

50 (1) **If a landlord gives a tenant notice to end a periodic tenancy under section 49** [*landlord's use of property*] or 49.1 [*landlord's notice: tenant ceases to qualify*], the tenant may end the tenancy early by

(a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and

(b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.

[My emphasis added]

Based on the above, I find that section 50 of the *Act* only applies to periodic (month to month) tenancies and does not apply to fixed-term tenancies. Therefore, I find the tenants' have failed to meet the burden of proof as I find the earliest the tenants could have ended the tenancy was on February 28, 2018 which was the end of the fixed term tenancy. Therefore, I dismiss the tenants' application in full without leave to reapply due to insufficient evidence.

As the tenants' application did not have merit, I do not grant the filing fee.

Conclusion

The tenants' application fails and is dismissed without leave to reapply.

The filing fee is not granted.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: October 2, 2018

Residential Tenancy Branch

Date Corrected: October 19, 2018