



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M, MNDCT, AAT, ERP, LAT, MT, LRE, OLC, OPT, PSF, RP

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- cancellation of the Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit (the Four Month Notice) pursuant to section 49;
- an Order of Possession of the rental unit pursuant to section 54;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- various remedies under the *Act* related to possession of the rental unit.

Landlord S.A. for business E.H.I. (the landlord), the tenant and the tenant's assistant attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, only the relevant details of the respective submissions and/or arguments are reproduced here.

The landlord acknowledged receipt of the Application for Dispute Resolution (the Application) which was served to them by registered mail. In accordance with section 89 of the *Act*, I find that the landlord is duly served with the Application.

The tenant did not provide any evidence or testimony that the other parties named on the Application were served with the Application. As the tenant has not proven service for business S.D. or Landlord R.D., the tenant's Application naming them as respondents is dismissed, without leave to reapply.

The tenant stated that they did not receive any evidence from the landlord. The landlord confirmed that, although they provided their evidence to the Residential Tenancy Branch (RTB), they did not provide that evidence to the tenant.

Rule 3.15 of the RTB Rules of Procedure states that documentary evidence intended to be relied on at the hearing by the respondent must be received by the applicant not less than 7 days before the hearing; however, I find that the landlord has provided two documents previously signed by the tenant. As the tenant signed these two documents, I find that the tenant is not prejudiced by their consideration and I will consider them.

The remainder of the landlord's evidence is not accepted for consideration as the tenant was not served with it and did not have a chance to review it.

Preliminary Matter

At the outset of the hearing the tenant testified that they were not served with a Four Month Notice. The tenant maintained that they were illegally evicted from the rental unit.

As there is no Four Month Notice, I dismiss the tenant's Application to cancel the Four Month Notice and for more time to cancel the Four Month Notice, without leave to reapply. I will now consider the remainder of the tenant's Application.

Issue(s) to be Decided

Is the tenant entitled to an Order of Possession for the rental unit and any of the other remedies sought under the Act which are associated to possession of the rental unit?

Is the tenant entitled to a monetary award for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

The landlord and the tenant agreed that this tenancy began on January 02, 2017, with a monthly rent of \$1,200.00, due on the first day of each month. Both parties agreed that no security deposit was paid for this tenancy.

The landlord provided in evidence:

- A document signed by the tenant on May 02, 2018, in which the tenant acknowledges that they must vacate the property before July 31, 2018; and
- A copy of a receipt, signed by the tenant for two nights' accommodation at a hotel on August 13, 2018, and August 14, 2018, which was paid by the landlord.

The tenant's assistant (the assistant) stated that the tenant was physically attacked by the landlord's agent on one occasion. The assistant admitted that they did not witness the assault but saw the landlord's agent leaving the rental unit with a red face. The assistant testified that the tenant was forcibly and illegally removed from the rental unit on August 13, 2018. The assistant stated that the tenant is requesting compensation for their illegal eviction and the assault as well as other issues regarding the rental unit in the amount of \$15,000.00

The tenant testified that he is a senior and confirmed that he was assaulted by the landlord's agent who used force to enter the residential unit during the tenancy. The tenant also testified that he was forcibly removed from the rental unit by about 20 guys who were surrounding him. The tenant stated that there were many issues with the rental unit for which he feels he should be compensated for.

The landlord disputed that the tenant was assaulted by their agent due to the fact that their agent is a 60 year old woman who they maintain is not aggressive by nature. The landlord testified that he was present at the time the tenant moved and he was not forcibly removed from the rental unit. The landlord stated that the tenant went of his own accord and the landlord only had two of his assistants present with him to assist the tenant in packing his belongings. The landlord stated that the tenant has already been compensated for moving as they did not pay rent June 2018, July 2018 or for their time in the unit for August 2018. The landlord submitted that is not pursuing this unpaid rent.

The landlord testified that the tenant was supposed to vacate the rental unit by July 31, 2018, as per the notice to vacate the tenant signed almost three months in advance of that date. The landlord stated that on August 13, 2018, they helped the tenant to pack their belongings, paid for a taxi to a hotel for the tenant and paid for two nights' accommodation for the tenant while they found a new place to live. The landlord submitted that the tenant is in a wheelchair and that they were mindful of this. The landlord stated that they no longer have possession of the rental unit as the property was sold to business S.D.

Analysis

Section 44 (1) (c) and (d) of the Act establishes that a tenancy ends when the landlord and the tenant agree in writing to end the tenancy and the tenant vacates the rental unit. Having reviewed the evidence and testimony, I find that the tenant did not dispute signing the landlord's form on which they agreed to vacate the rental unit for July 31, 2018. Based on a balance of probabilities and in the absence of any documentary

evidence to the contrary, I accept the landlord's testimony that the tenant willingly left the rental unit when assisted by the landlord on August 13, 2018.

For the above reasons I find that this tenancy ended by mutual agreement on August 13, 2018, when the tenant vacated the rental unit, as the tenant had agreed in writing to end the tenancy pursuant to section 44 of the *Act*. Therefore, the Application for an Order of Possession for the rental unit as well as for other remedies sought under the *Act*, associated with possession of the rental unit, are dismissed without leave to reapply.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the tenant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

Having reviewed all documentary evidence and affirmed testimony, I find that the tenant has not demonstrated that they have suffered any damage or loss due to the violation or neglect of the *Act*, regulations or tenancy agreement by the landlord. I find that the tenant has not provided any documentary evidence, such as a Monetary Order Worksheet or receipts, which would demonstrate that any loss actually exists as there is no evidence or testimony that rent was paid for August 2018.

As I have found that this tenancy ended in accordance with the *Act*, I find that the tenant has not demonstrated that they are entitled to any compensation based on an illegal eviction. I further find that the tenant did not provide any evidence that they tried to mitigate their situation by seeking alternate accommodations in consideration of the landlord's form that they signed to vacate the rental unit on July 31, 2018.

I find that the tenant has not satisfied the burden of proof that there was any assault, either by the landlord's agent during the tenancy or when the tenant was being moved by the landlord, which would establish a violation of the Act by the landlord. I find that the tenant has not provided any actual evidence of an assault such as police reports or witness statements. I find that the assistant did not testify to witnessing the assault on the tenant, only that they saw the landlord's agent leaving the rental unit with a red face, which is not conclusive evidence of any assault having occurred.

I find that, even had the tenant provided evidence of the conditions of the rental unit in violation of the Act, the tenant did not demonstrate that they had mitigated any claimed losses by addressing the noted issues in writing to the landlord or making an Application against the landlord during the tenancy.

For the above reasons, I find that the tenant has failed to prove that they have suffered a loss due to the actions of the landlord in violation of the Act, regulations or the tenancy agreement. Therefore, the tenant's Application for a monetary award is dismissed, without leave to reapply.

I note that, although there is no evidence of any violations of the Act by the landlord, the landlord should obtain an Order of Possession when a tenant does not move of their own accord.

Conclusion

The Application is dismissed in its entirety, without leave to reapply.

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: October 17, 2018

Residential Tenancy Branch