



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRT, MNSD

Introduction

This decision is in respect of the tenant's application for dispute resolution under the *Residential Tenancy Act* (the "Act"). The tenant sought compensation in the amount of \$7,565.00 for the following, as stated in the application: "Cost of fixing dryer" and "Double the security deposit for the landlord's conduct. 2 month's rent for landlord using the property as described in our eviction notice."

A dispute resolution hearing was convened and the landlord, landlord's legal counsel, a witness for the landlord, and the tenant attended. The parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The parties did not raise any issues in respect of the service of documents.

I confirmed with landlord's legal counsel that the landlords as named in the tenant's application should have only included one named landlord, who is reflected on the cover page of this decision. The other party named was the landlord's realtor.

The tenant submitted that the realtor was the landlord's agent. However, that this third party was the landlord's agent does not give rise to a claim of action against the third party, because only a tenant and a landlord may be named parties in an application for dispute resolution.

While I have reviewed all oral and documentary evidence submitted, only evidence relevant to the preliminary issue of this application is considered in my decision.

Preliminary Issue: Limitation Period of Claim Under Section 60 of the Act

In reviewing the application and hearing the tenant's testimony, I noted that while a Two Month Notice to End Tenancy (the "Two Month Notice") was issued on May 31, 2016 for an effective end of tenancy date of July 31, 2017, the tenant testified that she vacated the rental unit on or about June 1, 2016 (she was fairly, but not entirely, certain given the passage of time), and that she handed over the keys to the landlord's agent on June 13, 2016, and that her forwarding address was also handed over to the landlord at that time. The tenant applied for dispute resolution on June 22, 2018. Based on the oral and documentary evidence before, I explained to the parties that the tenant's action would be barred as it fell beyond the limitation period under section 60 of the Act.

Sections 60(1) and (2) of the Act state the following:

60(1) If this Act does not state a time by which an application for dispute resolution must be made, it must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned.

(2) Despite the *Limitation Act*, if an application for dispute resolution is not made within the 2 year period, a claim arising under this Act or the tenancy agreement in relation to the tenancy ceases to exist for all purposes except as provided in subsection (3).

The Two Month Notice (version #RTB-32 (2016/04)) stated that the landlord gave the tenant two months' notice to move out of the rental unit "By: 31 July 2016 (date when the tenant must move out of the rental unit)". This is, in other words, the latest date by which the tenant was required to vacate rental unit. It is not necessarily the date on which the tenancy ends *unless* the tenant also vacated the rental unit on that date.

In this case, the tenant moved out of the rental unit on June 1, 2016 and handed over the keys to the rental unit on June 13, 2016. It was at that moment that the tenant relinquished possession and control of the rental unit, thereby ending the tenancy. Indeed, the act of handing over keys is significant, and is consistent with section 37(2) of the Act, which requires that a tenant "give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Having carefully considered the oral and documentary evidence of the parties, I find that the tenant's application was not made within two years of the date that the tenancy to which the application relates ended. As such, the tenant's claim in relation to this tenancy ceases to exist.

Conclusion

I hereby dismiss the tenant's application 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 Act.

Dated: November 30, 2018

Residential Tenancy Branch