



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ATIRA PROPERTY MANAGEMENT INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant filed under the Residential Tenancy Act (the “Act”), for a monetary order for compensation, and the return of their filing fee. The matter was set for a conference call.

Two owners for the company (the “Landlord”) and the Tenant and their Advocate (the “Tenant”) attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

- Is the Tenant entitled to monetary compensation under the *Act*?
- Is the Tenant entitled to recover the cost of the filing fee?

Background and Evidence

The parties were unable to agree as to the date that this tenancy began. The Tenant testified that the tenancy began in the fall of 1999 when they started working as a sub contractor for the Landlord, paying \$550.00 per month in rent. The Tenant submitted a copy of a rent receipt dated May 2017 into documentary evidence.

The Landlord testified that they could not confirm the exact date that this tenancy began as the Tenant had been working for an independent contractor of the Landlord for several years before this tenancy began and that as a subcontractor, the Tenant was permitted to live on the rental property. The Landlord testified that they received the first rent cheque from the Tenant in September 2010, when the Tenant began working for the Landlord as an independent contractor. The Landlord testified that on August 30, 2017, the Tenant became a direct employee for the Landlord and that the rent was waved as of September 2017, as an employee housing benefit.

Both parties confirmed that there was no security deposit or pet damage deposit paid for this tenancy and that there was no signed tenancy agreement.

The Tenant testified that they had found black mould in their rental unit on September 9, 2019, which they reported to the Landlord on September 10, 2019.

The Landlord confirmed that they received the Tenant's report of black mould in the rental unit, on September 10, 2019, and testified that they took immediate steps to have the black mould treated and to have the Tenant moved to another rental unit until the repairs could be completed.

Both parties agreed that the Tenant moved into alternate accommodation, provided by the Landlord on September 10, 2019.

Both parties also agreed that it had been determined that the rental unit had been too old to repair and that a decision had been made to demolish this unit and replace it with a new trailer, which the Tenant would be permitted to move back into once complete.

The Tenant testified that the temporary accommodations they had been provided with had been a crew shack, which housed two people, and that they were unhappy with having to live with someone else after being on their own for so long. The Tenant testified that they spoke to the Landlord as they were concerned that the Landlord

would replace their demolished single occupancy rental unit with a double occupancy crew shack.

The Landlord testified that on September 11, 2019, the day after they had moved the Tenant to a crew shack, the Tenant came to them complaining that they could not live there and that they would stay in a camper, on the back of their truck, until the new rental unit was installed. The Landlord testified they had no problem with this and that the Tenant returned the keys to the crew shack that day and started living in their camper parked on the same site as the rental unit was located.

The Tenant testified that they had lived in the crew shack, until September 13, 2019, and that they had only moved out because the Landlord made them leave. The Tenant testified that on September 13, 2019, they got into an argument, through text message and in person, with the Landlord, regarding their use of the water and electricity at the mouldy rental unit. The Tenant testified that due to the argument that happened between them and the Landlord, they had quit their employment with the Landlord and that when they quit the Landlord demanded that they move out of the crew shacks and return the keys. The Tenant testified that they returned their keys to the crew shack and started living in the camper on the back of their truck that same day. The Tenant submitted six pages of text messages into documentary evidence.

The Tenant testified that it took them a few days, of living in their camper, to pack up the remainder of their possession and leave the rental property. The Tenant testified that they left the property as of September 29, 2019.

The Landlord testified that they agreed the Tenant left the property as of September 29, 2019, but that they disagreed that it had been them that told the Tenant to vacate. The Landlord testified the Tenant decided to leave the property on their own.

The Tenant testified that they are claiming for the recovery of \$1,486.95 in hotel costs, for nine-night stay at a local hotel, which they incurred due to their illegal eviction from the rental unit.

Analysis

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here.

Based on the above, testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenant is claiming for compensation in the amount \$1,486.95, to recover their costs for a hotel stay that they incurred due to being evicted by the Landlord. Awards for compensation due to damage or losses are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

In order to determine if the Tenant is entitled to the recovery of their hotel costs, I must first determine if there had been a breach of the *Act* by the Landlord in how this tenancy ended. I accept the testimony for both parties that the Landlord had not issued an approved Residential Tenancy Branch form to end this tenancy, nor had they issued a written letter to the Tenant to end this tenancy. In the absence of an official notice or written letter, I must rely on the verbal testimony of these parties to determine how this tenancy ended.

During these proceedings, I find that the parties to this dispute offered conflicting verbal testimony regarding how this tenancy ended. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their verbal testimony to establish their claim, in this case, that is the Tenant.

After reviewing the documentary evidence submitted into these proceedings by the Tenant, I find that the Tenant has not provided sufficient documentary evidence to convince me of their version of events leading up to the end of this tenancy.

I acknowledge the testimony of both parties that there had been a verbal and text message altercation between them, and I acknowledge that the Tenant believes that during that altercation, the Landlord had verbally told them to pack up and leave the property. Where, I can understand that a verbal altercation with your employer/landlord can create an uncomfortable living situation, a verbal or text message request to leave a rental unit does not constitute legal notice to end a tenancy under the *Act*. The Tenant was within their rights to remain in the rental unit until proper written notice to end the tenancy had been issued, as it is the written notice that creates the legal requirement for the other party to act.

In this case, I find that the Landlord did not officially end the tenancy with a notice, nor did they physically force the Tenant to vacate the property. Conversely, I find that the Tenant, willingly chose to walk-out on their tenancy on what the Tenant believed to be a verbal request from the Landlord to do so and that this choice, by the Tenant, to leave on a verbal request, does not constitute a breach of the *Act* by the Landlord.

In the absence of sufficient or compelling evidence to prove that the Landlord breached the *Act* during this tenancy, I find that the Tenant has not met the onus to establish their claim and that I must dismiss their claim for the recovery of their hotel costs in its entirety.

Additionally, the Tenant stated, during these proceedings, that they intend to file for another hearing, to make a claim for compensation pursuant to section 51 of the *Act*, which they had neglected to file for in these proceedings. In order to provide both parties with information regarding that potential claim, I have included the relevant section of the *Act* for their reference; section 51 states the following:

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.

In order for a party to be successful in a claim under this section, they will need to show that they received a notice pursuant to this section, which I have already determined in these proceedings was not issued.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant has been unsuccessful in their application, I find that the Tenant is not entitled to the return of their filing fee.

Conclusion

The Tenant's application is dismissed 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: May 1, 2020

Residential Tenancy Branch