



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, OPL, FFL, MNDCL-S, OPR

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- a monetary order for unpaid rent, pursuant to section 26;
- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67;
- an authorization to retain the tenant's security deposit, under section 38;
- an order of possession under a Two Month Notice to End Tenancy for Landlord's use of property, pursuant to sections 49 and 55;
- an order of possession under a 10-Day Notice to End Tenancy for Unpaid Rent, pursuant to sections 46 and 55; and
- an authorization to recover the filing fee for this application, under section 72.

This hearing was originally convened on April 13, 2021 and adjourned to May 20, 2021. This decision should be read in conjunction with the interim decision dated April 14, 2021.

Tenant EV and the landlord's agent SZ attended both hearings. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of both hearings the parties affirmed they understand it is prohibited to record the hearings.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that

each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

Preliminary Issue – Vacant Rental Unit

At the outset of the hearing both parties agreed the tenant moved out of the rental unit on April 27, 2021.

The application for an order of possession is moot since the tenancy has ended and the tenant left the rental unit.

Section 62(4)(b) of the Act states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss the application for an order of possession.

Preliminary Issue – Prior Settlement

The landlord is claiming for compensation for unpaid rent, mortgage interest and legal consultation expenses.

The tenant affirmed the landlord's agent EM agreed to withdraw this application, including the monetary claims, as a condition for him to move out. The tenant submitted into evidence an email dated April 25, 2021:

T: Reference to my conversation with [landlord], please send me an email confirming that you represent the landlord and also confirm that you will withdraw the file with BC residential tenancy and please confirm that I do not owe any money to landlord in terms of rent or any other fees. In return, when I receive your agreement with all mentioned in this email, I will be ready to move out by May 1st.

L: You told [landlord] that you will be ready to move out on the April 27th. Let me know what time you are done, I will come over and withdraw the file.

The tenant submitted into evidence a second email sent to the landlord:

It has been 10 days since I moved out and still you have not withdrawn the file with BC tenancy, today, I submitted our email conversation as evidence to the file and also, I am attaching an audio file which is my telephone conversation with [landlord] on April 17.

The landlord stated the parties did not mention in the emails that the landlord would withdraw the monetary claims as a condition for the tenant to move out. Later the landlord said that he considered that when he emailed the tenant on April 25, 2021 he was referring to withdraw only the application for an order of possession.

The tenant's email dated April 25, 2021 specifically mentioned "please confirm that I do not owe any money to the landlord in terms of rent or any other fees". The landlord replied the April 25, 2021 email stating he would withdraw the application. Two days later the tenant moved out and the landlord did not reply to the second email sent by the tenant inquiring about the withdrawal.

Based on the two emails and the tenant's more convincing testimony, I find the parties agreed that the tenant would move out of the rental unit and the landlord would withdraw this application, including the monetary claims. Thus, I find this application does not disclose a dispute that may be determined under the Act.

Section 62(4)(b) of the Act states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss the landlord's application for a monetary order.

The landlord should address the security deposit in accordance with section 38 of the Act.

The landlord must bear the cost of the filing fee, as the landlord was not successful.

Conclusion

I dismiss the landlord's application 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 25, 2021