



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This hearing was convened following applications for dispute resolution from both parties under the Residential Tenancy Act (the Act), where were heard simultaneously.

The Tenant requests the following:

- compensation from the landlord related to a fixed term tenancy with a requirement to vacate the rental unit at the end of the term.

The Landlord requests the following:

- compensation for monetary loss or other money owed;
- authorization to recover the filing fee for this application from the tenant under section 72 of the Act.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

As the Landlord acknowledged service of the Tenant's Notice of Dispute Resolution Proceeding package and did not raise any concerns regarding service, I find the Landlord was served in accordance with the Act.

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Service of Evidence

As the parties acknowledged receipt of each other's documentary evidence and did not raise any concerns regarding evidence, I accepted the documentary evidence before me for consideration.

Issues to be Decided

Is the tenant entitled to compensation from the landlord related to a fixed term tenancy with a requirement to vacate the rental unit at the end of the term?

Is the Landlord entitled to compensation for monetary loss or other money owed?

Is the Landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

The parties entered into a fixed-term tenancy agreement which spanned October 1, 2021, through September 30, 2022. That agreement was the standard tenancy agreement issued by the Residential Tenancy Branch, form RTB-1 (2019/11). It included a term indicating that the Tenant must vacate the rental unit at the end of the term. The reason indicated for this requirement was "To give back the house to the Landlord."

The Tenant vacated the property at the end of the term, but the Landlord did not occupy the house at the end of tenancy.

The Tenant subsequently applied for compensation from the landlord related to a fixed term tenancy with a requirement to vacate the rental unit at the end of the term, noting that the Landlord had rented the unit to another occupant after the Tenant's departure.

The Landlord disputed the Tenant's claim, arguing that he had never indicated an intention to occupy the unit at the end of the term and that he had informed the Tenant prior to the signing of the agreement, and afterwards, that he could remain beyond the one-year term of the lease agreement.

The Tenant testified the tenancy agreement document was completed by the Landlord on top of a kitchen counter in front of him, and that with respect to the vacate clause, he was instructed to check box "E". The Tenant said that he did not have any choice in the matter.

The Landlord disagreed with the Tenant's account of the circumstances surrounding the signing of the tenancy agreement. He said that prior to the signing of the agreement there was a meeting between the parties so that he could provide the Tenant with a blank agreement and addendum to review and complete. At that meeting the Tenant told the Landlord that he might buy a place in the next few months which he would then occupy and so he was interested in a shorter-term lease. The Landlord said he was not willing to lease for less than a year, but he would welcome the possibility that the Tenant might stay beyond one year.

In addition, the Landlord denied that he added or required the vacate clause indicating that he would occupy the unit. He said that it was the Tenant who filled in the blanks in the agreement and noted that the agreement terms were written in the Tenant's handwriting. He argued that the document was completed by the Tenant and then forwarded to him via email, which the Landlord corroborated with an electronic copy which showing only those portions completed in pen by the Tenant.

The Landlord denied signing the document in front of the Tenant, as alleged. The Landlord argued that if the agreement had been signed by in front of tenant, then it would have been in pen as well. This is not the case, as the Landlord's copy was signed electronically.

At the hearing, the Tenant agreed that the vacate clause was written by him.

The Landlord also argued that the lack of specificity regarding the vacate clause, which indicates "to give back the house to the Landlord", does not reference an intention by him to occupy it. The Landlord suggests that this is essentially what happens at the end of every tenancy- the property goes back to the landlord. In the circumstances, he did not interpret the clause as requiring the Tenant to vacate, but instead considered the Tenant's inclusion of it to be reflective of the Tenant's intention to leave at the end of the term.

The Landlord also provide a copy of his September 17 email to the Tenant indicating that he did not plan to move in and that the Tenant was welcome to remain. The Landlord testified that he had informed the Tenant at multiple intervals throughout the tenancy that he was welcome to remain beyond the end of the term.

Following the receipt of the Tenant's claim, the Landlord recalled that the Tenant had discussed purchasing a place prior to the entering into the tenancy. For this reason, the Landlord performed a land title search which indicated that the Tenant had purchased a property in February 2022. The Landlord noted that in response to his September 17 email to the Tenant indicating that he could remain, the Tenant wrote "we found a new place to move... we went through a lot of trouble to find a new place". The Landlord proposed that this was the property that he moved into, which the Tenant confirmed. The Landlord proposed that as the Tenant had simply moved into a residence which he had purchased, his statements that he encountered difficulty in finding a new place were disingenuous.

The Tenant explained that the trouble he went to in finding a new place was in relation to finding a larger place where his parents could live with him, and that the place he purchased was to have been an investment.

Following receipt of the Tenant's claim, the Landlord submitted a cross-application claiming compensation in respect to the loss of rent for October 2022 due to not having a tenant for that month. He said that based upon the previous discussions he had with the Tenant he had no idea the Tenant would be leaving at the end of September 2022. He said that although he immediately started looking for a new tenant and was only able to secure a tenant for November 2022.

Analysis

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.

Is the tenant entitled to compensation from the landlord related to a fixed term tenancy with a requirement to vacate the rental unit at the end of the term?

Section 51.1 of the RTA requires a landlord to pay compensation to a tenant if the landlord included a vacate clause in a fixed term tenancy and at the end of the fixed term, did not take steps, within a reasonable period after the date the tenancy ended, to satisfy the prescribed circumstance for ending the tenancy, or did not use the rental unit in a way that satisfies the prescribed circumstance for at least the prescribed period of time, beginning within a reasonable period after the date the tenancy ended. The onus is on the tenant to prove on a balance of probabilities that the landlord has failed to meet the obligations set out above.

The Landlord does not deny that he did not occupy the rental unit. However, it is also his position that at no time did he express an intention to occupy the unit, nor did he require the Tenant to vacate the unit.

A tenancy agreement must be entered into freely, with both parties understanding the terms of the agreement, and signing it because it is what they want to do. This is referred to in contract law as signing by “mutual assent”. Mutual assent is an essential element in the formation of a valid contract.

I have determined that mutual assent was absent with respect to the vacate clause of the tenancy agreement. In reaching this conclusion, I have preferred the Landlord’s testimony regarding the creation of the tenancy agreement, which was that the Tenant was the author of the vacate clause and that the Landlord expressed no intention to occupy the rental unit or force the Tenant to vacate. I have also considered that although the Tenant initially testified the tenancy agreement document was completed by the Landlord in front of him and that he was instructed to check box “E”, the Tenant later conceded that the vacate clause was written by him. I am satisfied that the document was completed by the Tenant in the Landlord’s absence then forwarded to him via email, as the Landlord corroborated this with an electronic copy which had only those portions completed in pen by the Tenant. I further find that the Landlord did not sign the agreement in front of tenant, as the Landlord’s copy demonstrates that it was signed electronically. As a result of the foregoing, I have found the Tenant’s credibility evidence to have been significantly diminished.

I have determined that the lack of specificity regarding the vacate clause, which indicates “to give back the house to the Landlord” reinforces the Landlord’s position that he did not interpret the clause as requiring the Tenant to vacate, but instead considered it to be reflective of the Tenant’s intention to not be bound beyond the end of the term.

I have found the Landlord's testimony to have been consistent and corroborated to a significant extent by documentary evidence. Conversely, I have not found the Tenant's evidence convincing. For instance, in response to the Landlord's September 17 email to the Tenant indicated that he did not plan to move in and that the Tenant was welcome to remain, the Tenant wrote "we found a new place to move... we went through a lot of trouble to find a new place". In fact, the place that the Tenant moved into was a property he purchased February 2022. Although the Tenant went on to explain that the effort he went to in finding a new place was in relation to a larger place where his parents could live with him, and that the place he purchased was to have been an investment, I do not find the Tenant's testimony regarding efforts to find a new place convincing. I find that the purchase further corroborates the Landlord's contention that prior to the signing of the agreement, the Tenant had sought a reduced term as he planned to purchase a place that he would then occupy. I also note that the Tenant appears to have purchased the property within the timeline proposed at that meeting. In light of the foregoing, I find the Tenant's credibility to have been further diminished.

I accept that the Landlord did convey to the Tenant prior to the signing of the agreement, and at intervals throughout, that the Tenant had the option to remain in the unit after the end of the fixed term. As a corollary to this, I find that the Tenant was aware that he had the option to remain in the rental unit at the end of the term, and that the Tenant was aware that he was not obliged to vacate in the circumstances. I find this is supported contextually by the fact that he made no inquiries regarding an extension, and that he had purchased a property which he intended to occupy.

In summary, mutual assent is closely related to the concept of meeting of the minds, which requires that the parties to a contract agree to the same terms, conditions, and subject matter. I find that with respect to the vacate clause of the contract there was not a meeting of the minds. In reaching this conclusion I have determined that the Landlord did not express an intention to occupy the unit, nor a requirement that the Tenant vacate, and that the Tenant inserted the clause despite being fully aware of the this. I further note that I have determined neither party believed that the Landlord intended to occupy the unit at the end of the term, or that the Tenant would be required to vacate the property at the end of the term. The vacate clause is void and unenforceable for this reason.

Is the Landlord entitled to compensation for monetary loss or other money owed?

Under section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant looking to establish the claim. In this case, to prove a loss, the Landlord 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 tenant 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 landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The Landlord claimed that based upon the previous discussions he had with the Tenant he had no idea the Tenant would be leaving at the end of September 2022. He said that he immediately started looking for a new tenant and was only able to secure a tenant for November 2022. He said that he is therefore owed compensation with respect to the loss of rent due to not having a tenant for the month of October 2022.

The Landlord's evidence is that he informed the Tenant at the outset of the tenancy agreement, and at multiple intervals throughout, that the Tenant could remain in the rental unit beyond the term of the tenancy agreement. Although I have found that the Tenant was aware that he was not bound to vacate, and that he had the option to extend the tenancy, I also note that there is no suggestion that the Tenant definitively stated that he would remain in the rental unit beyond the term of the tenancy. Ultimately, the tenancy was for a fixed term and the Tenant was not obliged to provide notice that he was vacating the property in these circumstances. I find that it was incumbent upon the Landlord to make additional inquiries to confirm the Tenant's intention, and that such inquiries ought to have been made prior to the final month of the fixed tenancy. The Landlord has failed to satisfy me that the damage or loss occurred due to the actions or neglect of the tenant.

For the above reasons, the Landlord's application for a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act is dismissed, without leave to reapply.

Is the Landlord entitled to recover the filing fee for this application from the tenant?

As the Landlord was not successful in this application, the Landlord's application for authorization to recover the filing fee for this application from the tenant under section 72 of the Act is dismissed, without leave to reapply.

Conclusion

The Tenant's application for compensation from the landlord related to a fixed term tenancy with a requirement to vacate the rental unit at the end of the term is dismissed, without leave to reapply.

The Landlord's application for compensation for monetary loss or other money owed is dismissed, without leave to reapply.

The Landlord's application for authorization to recover the filing fee for this application from the tenant under section 72 of the Act 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: October 19, 2023

Residential Tenancy Branch