



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("the Act") for a monetary order in compensation for the landlord's failure to use the rental unit as stated in a 2 Month Notice to End Tenancy for Landlord's Use ("2 Month Notice") pursuant to section 67 and to recover their filing fee pursuant to section 72.

The respondent did not attend this hearing. I waited 20 minutes to enable the respondent to attend and participate in this hearing scheduled for 1:00 p.m. Both tenants attended this hearing. They testified that the respondent purchased their residential rental premises and requested vacant possession as part of the purchase of the property. They testified that they served the purchaser ("landlord") with their Application for Dispute Resolution ("ADR") including the Notice of Hearing on November 27, 2017 by registered mail. The tenants submitted a copy of a form (a Notice for Vacant Possession) provided with their notice to end tenancy that includes the purchaser's mailing address.

The tenants submitted copies of their registered mail receipts to show that they served the purchaser with their ADR to the purchase. The Canada Post receipts submitted for this hearing by the tenants included the tracking numbers for each package. The tenants testified that the purchaser signed for their ADR package. Based on the tenants' testimony and undisputed evidence regarding service of the ADR (including the details of this hearing), I find that the purchaser was deemed served in accordance with section 89 and 90 of the Act by December 2, 2017 - 5 days after the date provided on the Canada Post receipt with tracking numbers.

I reviewed the Notice of Hearing prepared for this matter and confirmed that the correct call-in numbers and participant codes were provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenants and I were the only people who called into this teleconference.

While the purchaser did not attend this hearing, she submitted documentary evidence for this hearing on May 25, 2018. The documents submitted were titled, "*Letter of reason why I shouldn't pay for 2 months of rent for former tenant with backup documents*". I will not consider this evidence because the landlord was not present to testify in support of those materials. When a matter is set for a participatory hearing, each party is required to attend and testify.

Preliminary Matter

Section 49 in combination with section 51(2) and 51(3) of the Act indicate that a tenant may be entitled to compensation if a landlord (seller or purchaser) does not use the rental unit for the purpose stated in their 2 Month Notice within a reasonable period of time. However, prior to considering whether the tenants have met their burden to prove that the landlords did not comply with the 2 Month Notice provisions of the Act, I must be satisfied that they were issued a 2 Month Notice. The Act states that the landlords (both original landlord/seller and landlord/purchaser) are required to meet their obligations pursuant to section 49 to 51 of the Act when a 2 Month Notice is issued.

In their application, the tenants sought two months' rent because the landlord (in this case, the purchaser) did not use the premises as stated in the 2 Month Notice. Residential Tenancy Branch Rules of Procedure No. 2.5 and 3.2 provide information as to what documents are required when making a Residential Tenancy Dispute Resolution application,

2.5 ... To the extent possible, the applicant should submit the following documents at the same time as the application is submitted:

- a detailed calculation of any monetary claim being made;*
- a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and*
- copies of all other documentary and digital evidence to be relied on in the proceeding ...*

3.1 ...The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a) the Notice of Dispute Resolution Proceeding ...;*
- b) the Respondent Instructions for Dispute Resolution;*

- c) *the dispute resolution process fact sheet ...; and*
- d) *any other evidence submitted...*

The Act requires sufficient relevant evidence to support any application. In this case, the tenants did not submit a copy of the notice to end tenancy and sought compensation because the landlord did not fulfill the ground to end tenancy provided in the 2 Month Notice. I am not able to assess this notice because it was not provided as evidence for this hearing. Any determination of whether the landlord complied with the provisions of the notice to end tenancy requires examination of the notice to confirm and consider: the dates on the notice to end tenancy; the version of the notice to end tenancy provided; and most relevant, the reason provided on the notice to end the tenancy.

I provided the tenants with additional time to submit the notice to end tenancy however they did not submit a notice to end tenancy during or after this hearing. Based on the nature of this application in that it addresses a party's compliance with the Act in ending a tenancy and given the tenants submitted other comprehensive materials, I dismiss the tenants' application with leave to reapply. As the tenants were not successful in their application, they are not entitled to recover their \$100.00 filing fee.

Conclusion

I dismiss the tenants' application in its entirety with 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 Tenancy Act*.

Dated: July 11, 2018

Residential Tenancy Branch