



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The tenant and counsel for the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agree that the tenant served the landlord with his application for dispute resolution and his amendment by leaving copies of each in the landlord's mailbox. Counsel for the landlord confirmed the landlord received both packages. While this method of service does not accord with section 89 of the *Act*, I find that the landlord was sufficiently served for the purposes of this *Act*, pursuant to section 71 of the *Act*, because the landlord received the packages.

Issues to be Decided

1. Is the tenant entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlords' claims and my findings are set out below.

Both parties agree to the following facts. The landlords purchased the subject rental property in January of 2019 and that the tenant resided at the subject rental property prior to the purchase. Monthly rent in the amount of \$650.00 was payable on the first day of each month.

Both parties agree to the following facts. In February of 2019 the landlords served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") with an effective date of May 1, 2019. The tenant disputed the Two Month Notice. A Residential Tenancy Branch hearing occurred on May 2, 2019 and in a decision dated May 2, 2019 the Two Month Notice was cancelled and found to be of no force or effect. The May 2, 2019 decision was entered into evidence by the tenant, the file number is located on the cover page of this decision.

The relevant portions of the May 2, 2019 decision are as follows:

In this case, the landlord's evidence does not support the Notice, as the Act only allows the landlord's close family member to occupy the premise, not distance [sic] relatives as described. Therefore, I grant the tenant's application to cancel the Notice. **The notice is cancelled and has no force or effect.**

In this case, the tenant may have vacated the premises prior to the hearing, ending their tenancy; however, the landlord does not agree that they have vacated the premises. I find if the tenant has vacated the premise prior to the hearing that was a personal choice of the tenant.

The tenant testified that he moved out of the subject rental property on May 1, 2019 in accordance with the Two Month Notice and that the landlords re-rented the subject rental property to non-family members two to three months after he was evicted. The tenant testified that he is seeking 12 months' rent compensation, pursuant to section 51 of the Act, for being evicted in bad faith.

Counsel for the landlord did not dispute that the landlords re-rented the subject rental property to non-family members but argued that since the Two Month Notice was cancelled in the May 2, 2019 hearing, the landlords were not restricted in who they could rent the subject rental property to and section 51 of the *Act* does not apply.

Counsel for the landlord submitted that the May 2, 2019 decision specifically states that it was the tenant's personal choice to move out and so the tenant did not move out pursuant to the Two Month Notice and is therefore not entitled to the section 51 remedy.

The tenant testified that the eviction notice wasn't cancelled, it was enacted and that he moved out of the subject rental property in accordance with the notice and so section 51 of the *Act* does apply.

Analysis

Section 51(1) of the *Act* states that 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.

Section 51(2) of the *Act* states that subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if

- (a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or
- (b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

The remedy set out in section 51(2) of the *Act* applies to valid Two Month Notices to End Tenancy. Had the tenant moved out of the subject rental property on May 1, 2019 without contesting the Two Month Notice, he would have been entitled to section 51 compensation. In this case however, the tenant disputed the Two Month Notice, and won. Since the notice was cancelled in the May 2, 2019 hearing, the tenant is not entitled to remedies under section 51 of the *Act* because he was permitted to stay at the subject rental property, and it was his choice to move out. While the effective date of the

Two Month Notice was before the May 2, 2019 hearing, the tenant was entitled to stay at the subject rental property while he awaited the outcome of the hearing.

Pursuant to the above, I dismiss the tenant's application for dispute resolution without leave to reapply.

As the tenant was not successful in his application for dispute resolution, I find that he is not entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

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: March 06, 2020

Residential Tenancy Branch