



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDCT, FFT

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (Act), Regulation or tenancy agreement and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that the Dispute Resolution Package was served to the Landlord by registered mail, although she cannot recall the exact date of service. The Landlord stated that these documents were received on November 21, 2020, via registered mail. On the basis of the undisputed evidence, I find that these documents were served to the Landlord in accordance with section 89 of the *Residential Tenancy Act* (Act).

The Tenant stated that on March 12, 2020 all of the evidence she submitted to the Residential Tenancy Branch in November of 2019 and March of 2020 was served to a staff member at the Landlord's restaurant. The Landlord stated that he received this evidence from an employee on March 14, 2020.

Section 88 of the *Act* requires evidence to be served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;

- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
- (j) by any other means of service prescribed in the regulations.

I find that the Tenant's evidence was not served to the Landlord in accordance with section 88(a) of the *Act*, as there is no evidence it was personally served to the Landlord.

I find that the Tenant's evidence was not served to the Landlord in accordance with section 88(b) of the *Act*, as there is no evidence that the restaurant employee she served it to was acting as an agent for the Landlord for this tenancy.

I find that the Tenant's evidence was not served to the Landlord in accordance with sections 88(c) of 88(f) of the *Act*, as there is no evidence that the evidence was mailed to the Landlord or that it was left in his mail box.

I find that the Tenant's evidence was not served to the Landlord in accordance with section 88(e) of the *Act*, as there is no evidence that the evidence was left at the Landlord's residence.

I find that the Tenant's evidence was not served to the Landlord in accordance with section 88(g) of the *Act*, as there is no evidence that the evidence was posted at the Landlord's residence or place of business.

I find that the Tenant's evidence was not served to the Landlord in accordance with section 88(h) of the *Act*, as there is no evidence that the evidence was faxed to the Landlord.

I find that the Tenant's evidence was not served to the Landlord in accordance with section 88(i) of the *Act*, as there is no evidence that the evidence that the Tenant had authority to serve the Landlord in an alternate manner.

As the Landlord acknowledged receipt of the Tenant's evidence, I find that the Landlord has been sufficiently served with the evidence, pursuant to section 71(2)(c) of the *Act*. As the Tenant's evidence was sufficiently served to the Landlord, it was accepted as evidence for these proceedings.

The Landlord stated that on March 23, 2020 and on March 24, 2020 two packages were delivered, by courier, to the concierge at this Tenant's residential complex, who accepted the packages on behalf of the Tenant. He stated that one of the packages contained one piece of evidence and the other contained the rest of his evidence.

The Tenant stated that she received only one package from the concierge, with one page of evidence. She stated that she never received the second evidence package,

Section 88 of the *Act* does not authorize service of evidence by delivering it to a building concierge. I therefore cannot conclude that the Landlord's evidence was properly served to the Tenant. As the Tenant did not acknowledge receiving the bulk of the Landlord's evidence, I cannot conclude that it was sufficiently served to the Tenant.

As the Tenant's evidence was accepted as evidence, even though it was not served in accordance with section 88 of the *Act*, and the Landlord's evidence appears highly relevant to the issue in dispute, I concluded that it would be reasonable to adjourn the hearing for the purposes of providing the Landlord with the opportunity to properly serve his evidence to the Tenant. The parties were advised that we would proceed with the hearing and the hearing would be adjourned after the parties provided oral testimony. The Landlord was advised that he could discuss his documentary evidence during the hearing, with the understanding that I would not be considering that documentary evidence at the hearing.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each party affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

At the conclusion of the hearing the Landlord stated that he does not require an adjournment for the purposes of re-serving his evidence if I determine, on the basis of the Tenant's documentary evidence and the testimony of both parties, that the Tenant

has failed to establish the merit of her Application for Dispute Resolution. For reasons that will be outlined later in this decision, I have dismissed the Application for Dispute Resolution. As I have dismissed the Application for Dispute Resolution, I find that there is no need to adjourn the proceedings for the purposes of allowing the Landlord to re-serve his evidence.

Issue(s) to be Decided

Is the Tenant entitled to compensation, pursuant to section 51(2) of the *Act*, because steps were not taken to accomplish the stated purpose for ending the tenancy under section 49 of the *Act* within a reasonable period after the effective date of the Two Month Notice to End Tenancy for Landlord's Use or the rental unit was not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice?

Background and Evidence

The Landlord and the Tenant agree that:

- this tenancy began on May 15, 2018;
- rent was \$3,000.00 per month;
- the rental unit was vacated in November of 2019;
- on October 01, 2019 the Landlord sent the Tenant an email, in which he told her he wanted to move in to the rental unit and that she must move out by January 02, 2020;
- in the email of October 01, 2019, the Landlord informed the Tenant he intended to move back into the rental unit and subsequently sell it;
- after receiving the email of October 01, 2019, the Tenant informed the Landlord she would like to vacate the rental unit on November 15, 2019;
- after receiving the email of October 01, 2019, they discussed mutually agreeing to end the tenancy;
- on October 19, 2019 the Landlord sent the Tenant another email, which he read out at the hearing;
- in the email of October 19, 2019, the Landlord informed the Tenant that he would send her a document that they would both need to sign in order to end their tenancy;
- after sending he email of October 19, 2019, the Landlord sent the Tenant a Mutual Agreement to End the Tenancy, which he had signed;
- the Tenant did not return the Mutual Agreement to End the Tenancy, nor did she tell the Landlord she did not wish to sign that document; and

- the Tenant completed a Two Month Notice to End Tenancy for Landlord's Use.

The Landlord stated that:

- after sending the email on October 01, 2019, he realized that it was not a legal method of ending the tenancy;
- when he sent the email on October 01, 2019 he planning on selling the townhouse he was living in, and moving into the rental unit;
- he subsequently decided to stay in the townhouse and to sell the rental unit;
- the rental unit was subsequently sold, with the new owners taking possession of the unit on December 19, 2019;
- when the Tenant came to his restaurant on November 05, 2019 she was in a rush, so he signed the Two Month Notice to End Tenancy for Landlord's Use that she presented to him without reading the document;
- when the Tenant came to his restaurant on November 05, 2019, he presumed she was asking him to sign the Mutual Agreement to End the Tenancy they had previously discussed; and
- he quickly read the title of the Two Month Notice to End Tenancy for Landlord's Use, and he mistakenly assumed it was the Tenant providing him with two month's notice of her intent to vacate the rental unit.

The Tenant stated that:

- on November 05, 2019 she phoned the Landlord and told him she was coming to his restaurant with a document she wanted him to sign;
- she did not tell him the nature of the document she wanted him to sign;
- when she arrived at the restaurant she did not explain the nature of the Two Month Notice to End Tenancy for Landlord's Use;
- she believes the Landlord never intended to move into the rental unit and that he wanted her to move so he could sell the unit; and
- she did not sign the Mutual Agreement to End the Tenancy provided to her by the Landlord because she had been advised by the Residential Tenancy Branch that she should have been served with a Two Month Notice to End Tenancy for Landlord's Use.

The Tenant submitted a copy of the Two Month Notice to End Tenancy for Landlord's Use that is the subject of this dispute. The Notice declares that the tenancy is ending because the rental unit will be occupied by the landlord or the landlord's close family member.

Some testimony provided during the hearing is not summarized in this decision

because it is not relevant to my decision.

The Tenant applied for compensation of \$35,000.00, pursuant to section 51(2) of the *Act*, because the Landlord did not move into the rental unit.

Analysis

Section 49(3) of the *Act* permits a landlord who is an individual to end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

When a landlord wishes to end a tenancy, pursuant to section 49(3) of the *Act*, a landlord must give the tenant notice to end the tenancy, in accordance with section 49(2) of the *Act*, that is effective on a date that is not earlier than 2 months after the date the tenant receives the notice, is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and if the tenancy agreement is a fixed term tenancy agreement, is not earlier than the date specified as the end of the tenancy.

When a landlord wishes to end a tenancy, pursuant to section 49(3) of the *Act*, a landlord must provide the tenant with written notice, in accordance with section 49(7) of the *Act*, which complies with section 52 of the *Act*. Section 52(e) of the *Act* stipulates that to be effective the notice to end a tenancy must be in writing and must, when given by a landlord, be in the approved form. The approved form for ending a tenancy pursuant to section 49(3) of the *Act* is a Two Month Notice to End Tenancy for Landlord's Use (RTB-32).

On the basis of the undisputed evidence, I find that the email the Landlord sent to the Tenant on October 01, 2019 did not serve to end the tenancy, pursuant to section 49(3) of the *Act*, as it was not served in the proper form as required by section 52(e) of the *Act*. As the email did not serve to end the tenancy, pursuant to section 49(3) of the *Act*, I find that the Tenant was not required to vacate the rental unit on the basis of the email sent on October 01, 2019.

I find that the Tenant correctly understood that the Landlord would have to serve her with a Two Month Notice to End Tenancy for Landlord's Use if he wanted to end this tenancy pursuant to section 49(3) of the *Act*. I find that until the Landlord served the Tenant with proper notice of his intent to end the tenancy pursuant to section 49(3) of the *Act*, the Landlord did not have the right to end the tenancy pursuant to this section.

As previously stated, when a landlord wishes to end a tenancy pursuant to section 49(3) of the *Act*, the landlord must provide the tenant with written notice with a Two Month Notice to End Tenancy for Landlord's Use on form Residential Tenancy Branch-32. On the basis of the undisputed information, I find that the Landlord did not serve the Tenant with the Two Month Notice to End Tenancy for Landlord's Use that is the subject of this dispute. Rather, I find that the Tenant completed the Two Month Notice to End Tenancy for Landlord's Use, the Tenant asked the Landlord to sign it, and that the Tenant provided the Landlord with a copy of Two Month Notice to End Tenancy for Landlord's Use.

When a landlord serves a tenant with a Two Month Notice to End Tenancy for Landlord's Use, the landlord is obligated to serve the tenant with the Two Month Notice to End Tenancy for Landlord's Use in a manner that complies with section 88 of the *Act*. As there is no evidence that the Landlord personally served the Two Month Notice to End Tenancy for Landlord's Use to the Tenant; that he mailed it to the Tenant; that he left it at the Tenant's residence; that he faxed it to the Tenant; or that he served it in a manner directed by the Residential Tenancy Branch, I find that the Landlord did not serve the Tenant with this Two Month Notice to End Tenancy for Landlord's Use in accordance with section 88 of the *Act*.

I find that there is insufficient evidence to establish that the Landlord intended to serve the Two Month Notice to End Tenancy for Landlord's Use that is the subject of this dispute. In reaching this conclusion I was heavily influenced by the undisputed evidence that the Two Month Notice to End Tenancy for Landlord's Use was completed by the Tenant and that the Landlord did not direct or request the Tenant to complete that document.

I find that there is insufficient evidence to establish that the Landlord understood that he was signing a Two Month Notice to End Tenancy for Landlord's Use when that document was presented to him on November 05, 2019. In reaching this conclusion I was influenced by:

- the Landlord's testimony that he did not read the document when it was presented to him because the Tenant was in a hurry, which I find to be credible because the Tenant did not dispute she was in a rush;
- the Landlord's testimony that when the Tenant initially presented him with a document on November 05, 2019, he assumed it was a Mutual Agreement to End the Tenancy, which is credible because the parties had previously discussed mutually agreeing to end the tenancy;

- the Landlord's testimony that when he noticed the title of the Two Month Notice to End Tenancy for Landlord's Use, he mistakenly assumed that the Tenant was serving him with two months' notice of her intent to vacate, which is credible because the notice was being served to him by the Tenant as opposed to being served to the Tenant by the Landlord;
- the undisputed testimony that the Tenant did not explain the nature or content of the Two Month Notice to End Tenancy for Landlord's Use she asked him to sign;

As there is insufficient evidence to establish that the Landlord understood he was signing a Two Month Notice to End Tenancy for Landlord's Use when that document was presented to him on November 05, 2019, I find that the Landlord did not intend to complete that document and/or to serve the Tenant with the Two Month Notice to End Tenancy for Landlord's Use that is the subject of this dispute.

Section 51(2) of the *Act* stipulates, in part, that a landlord must pay a tenant an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if 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 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.

As I have concluded that the Landlord did not intend to serve the Tenant with the Two Month Notice to End Tenancy for Landlord's Use that is the subject of these proceedings and that the Landlord did not serve this Notice to the Tenant, I find that the Landlord is not subject to the penalty imposed by section 51(2) of the *Act*.

As the Landlord is not subject to the penalty imposed by section 51(2) of the *Act*, I dismiss the Tenant's application for compensation pursuant to that section.

I find that the Tenant has failed to establish the merit of her Application for Dispute Resolution and I therefore dismiss her application to recover the cost of filing this Application for Dispute Resolution.

Conclusion

The Tenant's application for compensation pursuant to section 51(2)(a) of the *Act* and compensation to recover the cost of filing this Application is dismissed.

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 31, 2020

Residential Tenancy Branch