



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking:

- 12 months compensation pursuant to section 51 of the *Act*; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Tenant, the Tenant’s spouse, the Landlord, and a family member of the Landlord, all of whom provided affirmed testimony. The Landlord acknowledged service of the Notice of Dispute Resolution Proceeding Package, including a copy of the Application and notice of the hearing, and the parties acknowledged receipt of each other’s documentary evidence and raised no service concerns.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”); however, I refer only to the relevant facts, evidence, and issues in this decision.

At the request of the parties, copies of the decision will be emailed to them at the email addresses provided in the Application.

Issue(s) to be Decided

Is the Tenant entitled to 12 months compensation pursuant to section 51 of the *Act*?

Is the Tenant entitled to recovery of the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

In the hearing the parties agreed that no RTB#32, known as a Two Month Notice to End Tenancy for Landlord’s Use of Property (“Two Month Notice”) was served. Instead, the

parties agreed that the Tenant was informed via text message that the Landlord was intending to move back into the rental unit and that the text message served as the Landlord's two month notice for that purpose.

There was no dispute among the parties that the Tenant and their family vacated the rental unit as a result of the text messages received from the Landlord.

Analysis

Section 51 of the *Act* states that a tenant who is served with a Two Month Notice pursuant to section 49 of the *Act* [*landlord's use of property*] is entitled to receive from the landlord an amount that is the equivalent of one month's rent payable under the tenancy agreement prior to the effective date of the notice and that 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, the landlord must pay to the tenant an amount that is equivalent of 12 times the rent amount payable under the tenancy agreement.

Although section 49 (3) of the *Act* allows 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, section 49 (7) states that any notice to end tenancy given under this section must comply with section 52 of the *Act*.

Section 52 of the *Act* states that in order to be effective, a notice to end tenancy given by a landlord must be in writing, signed and dated by the landlord giving notice, state the address for the rental unit and the grounds for ending the tenancy, and be in the approved form.

Although I consider the correspondence sent to the Tenant by the Landlord in relation to ending the tenancy to be in writing, and I find that it contains information about the reasons for ending the tenancy and an effective date of November 30, 2019, I do not find that this correspondence amounts to a valid notice to end tenancy under section 49 of the *Act*. The approved form, RTB#32, was not used by the Landlord, there is no date and signature from the Landlord, and the correspondence does not contain the address for the rental unit.

I appreciate that the Tenant and their family were acting in good faith when they complied with the Landlord's wishes and vacated the rental unit. However, I find that the

text messages from the Landlord amount to a request, rather than a valid Two Month Notice under the *Act*, and that the Tenant and their family therefore voluntarily vacated the rental unit without any legal obligation to do so.

As I have already found above that the Tenant was not served with a Two Month Notice in compliance with sections 49 and 52 of the *Act*, I therefore find that they are not entitled to 12 months compensation under section 51 (2) of the *Act*, and I dismiss the Tenant's Application without leave to reapply.

As the Tenant's Application has been dismissed, I decline to award recovery of the \$100.00 filing fee.

Conclusion

The Tenant's Application is dismissed, in its entirety, 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 1, 2020

Residential Tenancy Branch