



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on February 24, 2020, wherein the Tenant sought monetary compensation from the Landlords in the amount of \$35,100.00 pursuant to sections 51(2) and 72 of the *Residential Tenancy Act* (the "Act").

The hearing of the Tenants' Application was scheduled for 1:30 p.m. on July 6, 2020. The Tenant called into the hearing, as did her legal counsel, C.J. The owner, Q.Z., who was named on the original tenancy agreement and her legal counsel, H.F. called in as well. The original Tenants, K.F. and C.F., who were named on the Application as Landlords, also called into the hearing with their legal counsel, K.D. No one appeared for F.H. who was named as Landlord on the Application but not named on any of the tenancy agreements.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. Not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties *and* relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

During the hearing before me, the parties' respective legal counsel made submissions with respect to the status of the Landlords named on the Tenant's Application.

Counsel for F.H. and Q.Z. stated that her client, F.H., is not a proper party in that he was never named as a landlord on either tenancy agreement. A review of those documents confirms F.H. was not named as a landlord.

Counsel for the Tenant submitted that she named F.H. as he is an owner; she further stated that at the time of filing she did not have the benefit of the original tenancy agreement.

The tenancy agreement is the contract between the parties and sets out the parties to the contract. There was no dispute that F.H. was not a Landlord at any material time as while he may be an owner, he did not permit occupation of the rental property, nor did he have any involvement in the tenancies.

Section 64(3)(c) of the *Residential Tenancy Act* and *Rule 4.2* of the *Residential Tenancy Branch Rules of Procedure* permit me to amend the Tenant's Application for Dispute Resolution. I therefore amend the Application to remove F.H. from the Application.

Counsel for the named Landlords, K.F. and C.F., submitted that his clients were in fact the original tenants, who, by virtue of an assignment of their tenancy no longer have any interest in this tenancy.

The Tenant and K.F. and C.F. attended a prior arbitration before the Residential Tenancy Branch on January 3, 2020. K.F. and C.F. brought the Application as "landlords" and were referred to as such in the Decision of Arbitrator Green also of January 3, 2020; the following findings are relevant to the issues before me:

Considering all the evidence in this case, the Act and the Guideline, I find that the subject agreement was an assignment and not a sub-lease. I base my decision on the following:

- 1. The subject agreement is not for a shorter period – even one day - than the first agreement, as acknowledged by the landlords;*
- 2. In the subject agreement, the tenant does not agree to vacate the unit on a specific date to allow the original tenant (the landlords) to move back into the rental unit;*
- 3. The subject agreement was not temporary;*

While the tenant paid rent to the landlords, I find that the payments were based on a misunderstanding between the parties of the difference between a sub-lease and an

assignment. As stated, I find the subject agreement was an assignment and not a sublease although the parties may have called it by the latter term.

Accordingly, I find the relationship of landlord-tenant is between Y and the tenant.

I find that the landlords had no authority to enter into a Mutual Agreement to End Tenancy with Y. I find the tenant did not give the landlords authority to end the tenancy on her behalf, as acknowledged by both parties. I find the landlords improperly ended the tenancy to allow Y and family to occupy the unit without Y having to issue the required Two Month Notice under which the tenant would be entitled to one month's rent as compensation.

During the hearing I informed the parties I would determine whether K.F. and C.F. should be named as Landlords in the within action. Upon further consideration of the law and evidence before me, and for reasons which I will explain in further detail in this my Decision, I find such a determination is unnecessary.

Issues

1. Is the Tenant entitled to compensation pursuant to section 51(2) of the *Act*?
2. Should the Tenant recover the filing fee?

Background and Evidence

Introduced in evidence by the Tenant and titled "Notice to End Tenancy" was an email from K.F. and C.F. to the Tenant dated June 30, 2019. In this email K.F. and C.F. inform the Tenant that her tenancy is to end August 31, 2019.

K.F. and C.F. further write of a mutual agreement to end their tenancy, as well as the original Landlord's intentions with respect to the property.

The parties agreed that the Tenant did not receive a formal 2 Month Notice to End Tenancy for Landlord's Use on Form #RTB-32.

Counsel for the Tenant confirmed the Tenant seeks monetary compensation based on the June 30, 2019 email, which she characterized as a 2 month notice to end tenancy, as well as the Tenant's position that the property was not in fact used for the stated purpose.

Analysis

The Tenant applies for compensation pursuant to section 51(2) of the *Residential Tenancy Act*. Such compensation is available to tenants who receive a notice to end tenancy pursuant to section 49 of the *Act*; for clarity I reproduce the relevant portions of section 49 as follows:

49 ... (2) Subject to section 51 [*tenant's compensation: section 49 notice*], a landlord may end a tenancy

(a) for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be

(i) not earlier than 2 months after the date the tenant receives the notice,

(ii) 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

(iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or

...

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

(4) A landlord that is a family corporation may end a tenancy in respect of a rental unit if a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

...

(7) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*] and, in the case of a notice under subsection (5), must contain the name and address of the purchaser who asked the landlord to give the notice.

...

[emphasis added in **bold**]

As noted in bold above, a notice to end tenancy pursuant to section 49 must comply with section 52 which reads as follows:

52 In order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d)except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,

(d.1)for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and

(e)**when given by a landlord, be in the approved form.**

[emphasis added in **bold**]

Whether D.F. and C.F. were acting as agents of the owners, original landlords, or on their own behalf, the undisputed evidence before me is that the Tenant did *not* receive a notice which complies in form and content with section 49 and 52 of the *Act* .

The June 30, 2019 email was not “in the approved form”, which as noted above, is #RTB-32. #RTB-32 must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, and provide reasons for ending the tenancy. #RTB-32 also provides the Tenant with information relating to her right to dispute the notice, as well as applicable timelines, and provides the Tenant with further details regarding the landlord's intention with respect to the party. Section 49(7) provides that a notice under section 49 *must* comply with section 52, and section 52 provides that the notice *must* be in the approved form; there is no flexibility with respect to these requirements.

The Tenant may have acted on the June 30, 2019 email from D.F. and C.F., purporting to end the tenancy, however, this does give rise to compensation pursuant to section 51(2) of the *Act*.

I therefore dismiss the Tenant’s claim for compensation based on section 51(2) of the *Act*. As she has been unsuccessful in her claim, I also decline her request for recovery of the filing fee.

Conclusion

The Tenant’s 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: July 06, 2020

Residential Tenancy Branch