



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 the Tenants' adjourned Application for Dispute Resolution filed under the Residential Tenancy Act (the "Act"). The Tenants applied for a monetary order for compensation for a monetary loss or other money owed and to recover their filing fee. The matter was set for a conference call.

Both Tenants attended the hearing and were each affirmed to be truthful in their testimony. As the Landlord did not attend the hearing, service of the Notice of Dispute Resolution Hearing documentation was considered. The Tenants testified that they served the Landlord with the original Notice of Hearing documents by email, sent on June 2, 2020, as permitted by Residential Tenancy (COVID-19) Order, MO M089 (Emergency Program Act) made March 30, 2020 (the "Emergency Order"), a copy of the email was provided as proof of service. I find that the Landlord had been duly notified of the original proceedings.

As for the Notice of Dispute Resolution Hearing documentation for today's proceedings, I find that those documents had been sent to the Landlord by Canada post mail, sent by the Residential Tenancy Branch on October 1, 2020. I find that the Landlord had been duly notified of these proceedings in accordance with the Act.

The Tenants were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Are the Tenants entitled to monetary compensation under the *Act*?
- Are the Tenants entitled to recover the cost of the filing fee?

Background and Evidence

Tenants testified that they received an email from the Landlord on March 25, 2020, advising them that the rental property had been sold and that the new owner had requested that their tenancy be ended. The Tenants submitted a copy of the Landlord's email and the request from the buyer to end their tenancy into documentary evidence.

The Tenants testified that they were able to find a new place in early April and that they gave the Landlord ten days written notice and moved out, as of April 17, 2020, in accordance with the email Notice they received.

The Tenants testified that they are claiming for the recovery of their April rent, on a per diem basis between April 18, 2020, to April 30, 2020, and the one month's compensation that they are due under section 51 of the Act.

When asked, the Tenants confirmed that they had not received a formal Two-Month Notice to End Tenancy for the Landlord Use before they moved out of the rental unit.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenants have claimed for compensation pursuant to section 51 of the Act; the Act states that a tenant who received a notice to end tenancy under section 49 of the act is entitled to the equivalent of one month's rent as compensation.

Tenant's compensation: section 49 notice

51 (1) 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.

In order to confirm if the Tenants are entitled to compensation under section 51 of the Act, I must first determine if the Landlords issued a notice pursuant to section 49 of the Act. Section 49(7) of the Act states that a notice issued under this section must comply with the “form and content of a notice to end tenancy” as set out in section 52 of the Act, which states the following:

Form and content of notice to end tenancy

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.*

I have reviewed the “notice” submitted into evidence that the Tenants claim is the notice to end their tenancy. I noted that the “notice” is an email from the Landlord to the Tenants asking them to leave. Section 52(e) of the Act requires that a notice issued by a landlord to end a tenancy must be on the approved form. In this case, that approved form would have been the Residential Tenancy Branch form #RTB-32 Two Month Notice to End Tenancy for Landlord’s Use of Property.

I accept the testimony for the Tenants that the Landlords did not issue the Residential Tenancy Branch form #RTB-32 Two Month Notice to End Tenancy for Landlord’s Use of Property to the Tenants. As the Landlord did not issue form #RTB-32 Two Month Notice to End Tenancy for Landlord’s Use of Property, I find that the Landlord had not issued a legal notice to end this tenancy pursuant to section 49 of the Act.

Consequently, as the Landlord had not issued a legal notice to end the tenancy on the approved form, I find that no compensation is due to the Tenants. Therefore, and I dismiss the Tenants’ claim for compensation under the Act and for the recovery of their paid rent between April 18 to April 30, 2020.

Conclusion

The Tenants' 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: January 20, 2021

Residential Tenancy Branch