



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on November 13, 2020 (the "Application"). The Tenants applied for compensation from the Landlord related to a Notice to End Tenancy for Landlord's Use of Property (the "Notice").

The Tenant appeared at the hearing. The Landlord did not appear at the hearing. I explained the hearing process to the Tenant who did not have questions when asked. The Tenant provided affirmed testimony.

The Tenants submitted evidence prior to the hearing. The Landlord did not submit evidence. I addressed service of the hearing package and Tenants' evidence.

The Tenant testified that the hearing package and evidence were sent to the rental unit by registered mail. The Tenants submitted a photo of the package with Tracking Number 1 on it. I looked Tracking Number 1 up on the Canada Post website which shows the package was sent November 22, 2020 and notice cards were left November 24, 2020 and December 04, 2020. The website shows the package was unclaimed and returned. In relation to the address used, the Tenant testified that the Notice was issued because the Landlord intended to move into the rental unit. The Tenants submitted an email from the Landlord indicating they intended to move into the rental unit. The Tenants submitted the Notice which is dated June 27, 2020.

I am satisfied the Landlord could be served at the rental unit given the email in evidence and the Notice. Based on the undisputed testimony of the Tenant, photo and Canada Post website information, and pursuant to section 71(2) of the *Residential Tenancy Act* (the "Act"), I am satisfied the Landlord was sufficiently served with the hearing package and evidence. I am satisfied of service because the hearing package and evidence

were sent to the Landlord by registered mail at an address the Landlord could be served at. I acknowledge that the package was unclaimed; however, the Landlord cannot avoid service by failing to pick up registered mail. I am also satisfied the Tenants complied with rule 3.1 of the Rules of Procedure (the "Rules") in relation to the timing of service.

Given I was satisfied of service, I proceeded with the hearing in the absence of the Landlord. The Tenant was given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence and all oral testimony of the Tenant. I will only refer to the evidence I find relevant in this decision.

Issue to be Decided

1. Are the Tenants entitled to compensation from the Landlord related to the Notice?

Background and Evidence

The Tenants sought \$26,400.00 in compensation pursuant to section 51 of the *Act* based on the Landlord failing to follow through with the stated purpose of the Notice.

A written tenancy agreement was submitted as evidence. The tenancy started July 10, 2019. Rent was \$2,200.00 per month.

The Tenant testified that the tenancy ended July 31, 2020.

The Tenants submitted the Notice; however, only the first page of the Notice. The Tenant testified that the Tenants only received the first page of the Notice.

The Tenants submitted an email from the Landlord stating that they intend to move into the rental unit and therefore the Tenants must vacate.

The Tenant took the position that the Landlord did not move into the rental unit and testified as follows. The Tenants had packages sent to the rental unit that were not forwarded to them. If the Landlord was living at the rental unit, the Landlord would have let the Tenants know about the packages. A neighbour of the rental unit told the Tenants the Landlord is not living at the rental unit. The Tenants texted the Landlord about mail and the Landlord said they would leave it at the townhouse. It was always a couple of days before the Tenants could pick the mail up from the rental unit. The hearing package and evidence were sent to the rental unit and were unclaimed.

The Tenants submitted the following documentary evidence:

- The email referred to above
- The first page of the Notice
- A photo of the unclaimed package
- The tenancy agreement

Analysis

Section 51 of the *Act* sets out compensation due to tenants served with a notice to end tenancy issued pursuant to section 49 of the *Act* and states:

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...

(2) Subject to subsection (3), the landlord...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.

(emphasis added)

I am not satisfied the Tenants are entitled to compensation pursuant to section 51 of the *Act* for two reasons. First, I am not satisfied the Tenants received a notice to end a tenancy under section 49 of the *Act*. Second, I am not satisfied the Landlord failed to follow through with the stated purpose of the Notice.

The Tenants only received the first page of the Notice. A Two Month Notice to End Tenancy for Landlord's Use of Property issued pursuant to section 49 of the *Act* is four pages long. The length of the notice is noted on page one which states "page 1 of 4"

and “see pages 3 and 4 for important information” at the bottom. The reasons for a notice issued pursuant to section 49 of the *Act* are stated on page two of the notice. There are six different possible reasons for issuing the notice.

I am not satisfied the Tenants received a notice to end tenancy issued pursuant to section 49 of the *Act* because the Notice does not comply with section 52 of the *Act* as required by section 49(7) of the *Act*. The Notice is not a valid notice to end tenancy and the Tenants were not required to vacate the rental unit pursuant to the Notice.

I acknowledge that in most circumstances non-compliance with section 52 of the *Act* will not preclude a tenant from being successful under section 51 of the *Act*. However, here the Notice did not include three of the four pages and did not include page two which contains the reasons for the Notice. It is clear that the Notice is not a complete notice to end tenancy given the notations of “page 1 of 4” and “see pages 3 and 4 for important information” on the first page of the Notice. The absence of three pages and the absence of reasons for the Notice are obvious deficiencies and are serious enough that the Tenants should have been alerted to the fact that the Notice was not valid.

I acknowledge that the Landlord also sent the Tenants an email indicating that they intended to move into the rental unit. However, I do not find that the email changes the analysis as it is also not a notice to end tenancy issued pursuant to section 49 of the *Act* and it does not form part of the Notice.

In my view, the Tenants must show that they were issued a notice to end tenancy pursuant to section 49 of the *Act* and that the Landlord failed to follow through with the stated purpose of the notice. Here, the Tenants were not issued a valid notice to end tenancy pursuant to section 49 and there is no stated purpose on the Notice given it does not include page two. I do not accept that the Landlord could fail to follow through with the stated purpose of the Notice when there is no stated purpose on the Notice.

In the circumstances, I am not satisfied the Tenants are entitled to compensation as I am not satisfied section 51(2) of the *Act* applies. The Application is dismissed without leave to re-apply.

Conclusion

The Application is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: March 17, 2021

Residential Tenancy Branch