



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order of \$24,000.00 for compensation related to a notice to end tenancy for landlord's use of property, pursuant to section 51; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The "female tenant" did not attend this hearing, which lasted approximately 27 minutes. The two landlords (male and female) and the male tenant ("tenant") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant confirmed that he had permission to represent the female tenant, who is his wife, at this hearing (collectively "tenants"). The female landlord ("landlord") confirmed that she had permission to represent the male landlord at this hearing (collectively "landlords"). The male landlord did not testify at this hearing.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlords were duly served with the tenants' application.

Preliminary Issue – Landlords' Application Scheduled for Future Hearing

During the hearing, the landlord asked if the landlords' application against the tenants for damages and the security deposit, could be dealt with at this hearing. She claimed that she did not file it in time to be heard with the tenants' application for this hearing. She said that the future hearing was scheduled for July 9, 2021 at 1:30 p.m. The file

number for that hearing appears on the front page of this decision. The landlord stated that the landlords' application was mailed to the tenants on February 23, 2021, but it had not yet been picked up by them, although it was available on March 3, 2021. The tenant opposed dealing with the landlords' application at this hearing. He claimed that he did not receive the landlords' application and he moved at the beginning of February 2021. He provided a new address for service to the landlord at the hearing, which the landlord re-confirmed with the tenant.

I notified both parties that since the tenant did not have notice of the landlords' application, he was not prepared to deal with it at this hearing, and the landlords did not file it in time to be heard together with the tenants' application, I could not hear the landlords' application at this hearing. I informed both parties that they would have to attend the future hearing on July 9, 2021 at 1:30 p.m. Both parties confirmed their understanding of same.

Issues to be Decided

Are the tenants entitled to a monetary order for compensation under section 51(2) of the *Act*?

Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the tenants' documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on October 31, 2019 and ended on September 3, 2020. Monthly rent in the amount of \$2,000.00 was payable on the first day of each month. A security deposit of \$1,000.00 and a pet damage deposit of \$500.00 were paid by the tenants and the landlords continue to retain both deposits. A written tenancy agreement was signed by both parties.

The tenants seek compensation under section 51(2) of the *Act* for twelve months' rent, of \$2,000.00, totalling \$24,000.00, plus the \$100.00 filing fee.

The tenant testified regarding the following facts. At the beginning of their tenancy, the landlords told the tenants verbally that this would be a tenancy of between one to three years, but the landlords were confident that it would be for two to three years. The landlords said their son would buy and move into the rental unit. The landlords' son did not move into the rental unit when the tenants moved out. The landlords spent months making a plan for a secondary suite, which they built. The landlords gave a handwritten notice for the tenants to move out, which was provided for this hearing. The tenants knew they did not have to move out because they did not receive any notices to end tenancy on the approved forms from the landlords. The tenants agreed to move out and received one month of free rent compensation from the landlords "off the record" for moving out. Since the landlords did not use the rental unit for the purpose in their verbal agreement and did not fulfill their intention for their son to move in, the tenants are entitled to compensation.

Both parties agreed that the tenants were not given a Two Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice") or a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of a Rental Unit ("4 Month Notice") by the landlords in the approved Residential Tenancy Branch ("RTB") forms.

The landlords dispute the tenants' application. The landlord stated that her son moved into the rental unit on December 2, 2020, and that it took a long time because of the damages to the rental unit.

Analysis

Sections 49, 51 and 52 of the *Act*, state in part (my emphasis added):

- 49 (2) *Subject to section 51 [tenant's compensation: section 49 notice], a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that must be*
- (a) *not earlier than 2 months after the date the tenant receives the notice,*

...

(7) A notice under this section must comply with section 52 [form and content of notice to end tenancy].

51 (2) Subject to subsection (3), **the landlord** or, if applicable, the purchaser who asked the landlord **to give the notice 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.

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

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

Since the tenants did not receive a 2 Month Notice or a 4 Month Notice in the RTB approved forms from the landlords, as required by sections 49 and 52 of the *Act*, I find that the tenants are not entitled to any monetary compensation under section 51 of the *Act*. Accordingly, the tenants' application to recover twelve months rent compensation totalling \$24,000.00 as per section 51 of the *Act*, is dismissed without leave to reapply.

As the tenants were unsuccessful in this application, I find that they are not entitled to recover the \$100.00 filing fee from the landlords.

During the hearing, I notified both parties of my decision verbally.

Conclusion

The tenants' entire 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: March 12, 2021

Residential Tenancy Branch