



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 for compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord's agent and the two tenants 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 landlord's agent confirmed that he had permission to represent the landlord at this hearing. This hearing lasted approximately 47 minutes.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* does not permit recording of a hearing by parties.

I explained the hearing and settlement processes to both parties during the hearing. Both parties had an opportunity to ask questions. Neither party made any adjournment or accommodation requests. Both parties confirmed that they wanted to attempt to settle this application, which they attempted for 47 minutes, without resolution.

The landlord's agent confirmed receipt of the tenants' notice of hearing, but not the tenants' application for dispute resolution or the tenants' evidence. The tenants said that they did not serve the landlord with their application or evidence because they could not find the landlord or his address for service.

The tenants stated they did not want to proceed with this hearing, without their evidence being considered at the hearing or in my decision. They asked to reapply and serve their application and evidence to the landlord. The landlord's agent agreed.

I notified the tenants that their application was dismissed with leave to reapply, except for the \$100.00 filing fee. I informed them that they did not serve the landlord with their application and evidence, as required by section 89 of the *Act* and Rule 3.1 of the *RTB Rules of Procedure*. Both parties consented to the tenants reapplying and serving their documents to the landlord.

I notified the tenants that their application was made prematurely, as they confirmed it was filed on January 8, 2021, after their tenancy ended on November 30, 2020. I informed both parties to review section 51 of the *Act*, as noted below, which is the basis for the tenants' application made at this hearing:

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.

(3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from

(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or

(b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

I informed the tenants that they would be required to file a new application, pay a new filing fee, and provide proof of service at the next hearing, if they choose to pursue this matter further. They confirmed their understanding of same.

Conclusion

The tenants' application to recover the \$100.00 filing fee is dismissed without leave to reapply.

The tenants' application for a monetary order for compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property, is dismissed with 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 13, 2021

Residential Tenancy Branch