



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DVR CONSULTING SERVICES
INC. and [tenant name suppressed to protect privacy]

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 \$40,000.00 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 16 minutes. The individual landlord ("landlord") 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 at this hearing (collectively "tenants"). The landlord confirmed that he was the owner of the landlord company named in this application and that he had permission to speak on its behalf (collectively "landlords"). The landlord confirmed that he and the landlord company previously represented the individual owner of the rental unit, during this tenancy.

At the outset of this hearing, I informed both parties that Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* does not permit recording of this hearing by anyone. The landlord and tenant both affirmed, under oath, that they would not record this hearing.

I explained the hearing process to both parties. Both parties had an opportunity to ask questions. Neither party made any adjournment or accommodation requests.

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.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenants' application to add the name of the landlord company. The landlord consented to this amendment during the hearing. Both parties confirmed that the landlord company is named as the landlord in the tenancy agreement and the mutual agreement to end tenancy.

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 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. A written tenancy agreement was signed by both parties and a copy was provided for this hearing. The tenants vacated the rental unit on October 31, 2020. Both parties (the two tenants and the landlord's agent) signed a mutual agreement to end tenancy on October 8, 2020, for the tenants to vacate the rental unit on October 31, 2020 ("mutual agreement"). A copy of this mutual agreement was provided for this hearing.

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") by the landlords in the approved Residential Tenancy Branch ("RTB") forms.

The tenant said that he was told by a lawyer that an email can be construed as a notice to end tenancy. The tenant claimed that because the landlords sent emails to the tenants requesting the rental unit for their personal use and asked the tenants to move out, the tenants are entitled to compensation.

The tenants seek compensation under section 51(2) of the *Act* for twelve months' rent of \$3,100.00, plus hotel fees and moving costs, totalling \$40,000.00, plus the \$100.00 filing fee. The tenant stated that the owner wanted the rental unit for his personal use, but he subleased it after the tenants moved out. The landlords dispute the tenants' application.

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 in the approved RTB form from the landlords, as required by sections 49 and 52 of the *Act*, I find that the tenants are not entitled to monetary compensation under section 51 of the *Act*. Emails from the landlords to the tenants are not considered to be an approved RTB form under the *Act*.

Accordingly, the tenants' application to recover twelve months rent compensation of \$3,100.00 for each month, totalling \$37,200.00, as per section 51 of the *Act*, is dismissed without leave to reapply.

The tenants provided a copy of their mutual agreement for this hearing. The tenant agreed, during this hearing, that the mutual agreement contains the following disclaimer at the top of the RTB form, in a bright yellow box (my emphasis added):

This form is not a notice to end tenancy. Neither the landlord nor tenant are under any obligation to sign this form. By signing this form, it means that you understand and agree that your tenancy will end with no further obligations between you and the other party. If you are a tenant, this may mean that you are foregoing any right to compensation that may have been available to you if you were to be served with a notice to end tenancy. If you have questions about your rights and responsibilities under the Residential Tenancy Act or the Manufactured Home Park Tenancy Act, contact the Residential Tenancy Branch by using the contact information at the bottom of this form.

At the bottom of the same mutual agreement, under the date and signature lines of both parties, the RTB form states (my emphasis added):

The parties recognize that the tenancy agreement between them will legally terminate and come to an end at this time. It is also understood and agreed that this agreement is in accordance with the Residential Tenancy Act and the Manufactured Home Park Tenancy Act which states: "The landlord and tenant agree in writing to end the tenancy."

The tenants' application for hotel and moving costs of \$2,800.00, is dismissed without leave to reapply. The tenants did not provide documentary proof of these costs for this hearing. Further, the tenants voluntarily agreed to vacate the rental unit by signing the mutual agreement to end tenancy.

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 this hearing, I notified both parties of my decision verbally. Both parties confirmed their understanding of same.

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: August 27, 2021

Residential Tenancy Branch