



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

On April 11, 2021, the Tenants applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation based on a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to Sections 51 and 67 of the *Residential Tenancy Act* (the "Act") and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Tenant Q.N. attended the hearing; however, the Landlord did not attend at any point during the 24-minute teleconference. At the outset of the hearing, I informed the Tenant that recording of the hearing was prohibited and he was reminded to refrain from doing so. He acknowledged this term and he provided a solemn affirmation.

The Tenant advised that the Notice of Hearing and evidence package was served to the Landlord by registered mail on April 22, 2021 and he received confirmation that this package was delivered (the registered mail tracking number is noted on the first page of this Decision). He stated that he served this package to the dispute address because the Landlord intended to occupy the rental unit, pursuant to the Notice. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was duly served the Notice of Hearing and evidence package. As such, I have accepted this evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to a Monetary Order for compensation?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Tenant advised that the tenancy started on September 15, 2020 as a month-to-month tenancy, and it ended when they gave up vacant possession of the rental unit on February 1, 2021. Pursuant to Section 50 of the *Act*, on January 15, 2021, they served the Landlord with their 10-day written notice to move early by placing it in the Landlord's mailbox. Rent was established at \$1,425.00 per month and was due on the first day of each month. A security deposit of \$750.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

He advised that the previous owner that they originally signed the tenancy agreement with had sold the property to the Landlord. They were subsequently served with the Notice, by the previous owner, on December 22, 2020 that had an effective end of tenancy date of March 31, 2021. The previous owner explained to them that the new Landlord would be taking possession of the property on January 16, 2021, so they were required to pay half of January 2021 rent to the previous owner. He stated that they were then instructed to pay the Landlord the remaining amount of rent for January 2021 by electronic transfer. He referenced documentary evidence submitted to corroborate these two different payments of rent to the previous owner and to the new Landlord. As well, he stated that he was informed that it was the Landlord or Landlord's close family member that would be occupying the rental unit after the effective date of the Notice.

The Tenants are seeking compensation in the amount of **\$1,425.00** because they did not receive one month's rent compensation that they are entitled to after being served the Notice, pursuant to Section 51(1) of the *Act*. He testified that they asked for this compensation from the Landlord, but he failed to compensate them in this amount.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

With respect to the Tenants' claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

Regarding the Tenants' claim for one month's compensation owed to them when they were served the Notice, I find it important to note that Section 51 of the *Act* reads in part as follows:

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.*

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

The undisputed testimony is that the previous owner had sold the rental unit to the new Landlord, and this Landlord took possession of the rental unit on January 16, 2021. Furthermore, there is clear evidence that the Tenants paid half a month of rent to the Landlord in mid-January 2021 and that they served their 10-day written notice to him as well.

When reviewing the Notice, it is apparent that the previous owner identified herself as the landlord on the first page and then noted the Landlord's name as the purchaser on

the second page. It was also indicated on this Notice that a copy of the purchaser's written request for the seller to issue the Notice to the Tenants was attached. However, the previous owner appears to have checked off the wrong box as the reason to end the tenancy. The previous owner checked off the box that the "rental unit will be occupied by the landlord or a close family member (parent, spouse or child; or the parent or child of that individual's spouse)." As well, the previous owner indicated that the "father or mother of the landlord or landlord's spouse" would be occupying the rental unit. By noting this, the previous owner appears to have served the Notice because she wanted vacant possession of the rental unit for the use of her close family member.

Had the rental unit been sold and had the purchaser wanted vacant possession of the property, the previous owner should have checked off the box that "All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or close family member intends in good faith to occupy the rental unit."

However, despite this, for the purposes of this claim, as the undisputed evidence is that the Landlord took over possession of the rental unit on January 16, 2021 and that rent was paid to him directly, I am satisfied that he is responsible for the one month's compensation owed under Section 51 of the *Act* after the Notice had been served. As the Tenants were entitled to the one month's compensation after being served this Notice, and as the Landlord has not compensated them in this amount on or before the effective date of the Notice as required by law, I grant the Tenants a monetary award of one month's rent of **\$1,425.00**.

As a note, no findings in fact or law have been made with respect to whether the previous owner or the Landlord would be responsible for a future claim of 12 months' compensation if the property was not used for the stated purpose.

Pursuant to Sections 51, 67, and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenants

Item	Amount
One month's rent compensation	\$1,425.00
Filing fee	\$100.00
Total Monetary Award	\$1,525.00

Conclusion

I provide the Tenants with a Monetary Order in the amount of **\$1,525.00** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: September 15, 2021

Residential Tenancy Branch