



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 tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant only

The tenant testified the landlord was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by email on July 22, 2021 in accordance with Section 89. Section 44 of the Residential Tenancy Regulation deems documents served in such a manner to be received on the 3rd day after they have been mailed.

Based on the testimony of the tenant, I find that the landlord has been sufficiently served with the documents pursuant to the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for the return of rent and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 49, 51, 52, 67, and 72 of the *Act*.

Background and Evidence

The tenant submitted into evidence a copy of a tenancy agreement signed by the parties on November 27, 2020 for a 5½ fixed term tenancy beginning on January 1, 2021 for a monthly rent of \$2,900.00 due on the 1st day of each month with a security deposit of \$1,450.00 paid.

The tenant confirmed through his evidence and testimony that he did not receive an official written notice to end tenancy from the landlord despite her indication to him by various conversations and text messages that she wanted to end the tenancy so that she could sell the residential property.

Analysis

Section 49 (2) states subject to section 51 [tenant's compensation: section 49 notice], a landlord may end a tenancy

- (a) for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be
 - (i) not earlier than 2 months after the date the tenant receives the notice,
 - (ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
 - (iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or
- (b) for a purpose referred to in subsection (6) by giving notice to end the tenancy effective on a date that must be
 - (i) not earlier than 4 months after the date the tenant receives the notice,
 - (ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
 - (iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

Section 49 (3) states a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Section 49 (4) allows a landlord that is a family corporation may end a tenancy in respect of a rental unit if a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

Section 49(5) says a landlord may end a tenancy in respect of a rental unit if

- (a) the landlord enters into an agreement in good faith to sell the rental unit,
- (b) all the conditions on which the sale depends have been satisfied, and
- (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
 - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
 - (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

Section 49(6) states a landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

- (a) demolish the rental unit;
- (b) [Repealed 2021-1-13.]
- (c) convert the residential property to strata lots under the *Strata Property Act*,
- (d) convert the residential property into a not-for-profit housing cooperative under the *Cooperative Association Act*,
- (e) convert the rental unit for use by a caretaker, manager or superintendent of the residential property;
- (f) convert the rental unit to a non-residential use.

There are no provisions under Section 49 of the *Act* that would allow a landlord to end a tenancy because she wanted it vacant to sell the property.

Section 52 of the *Act* requires that in order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,
- (d.1) for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2, and
- (e) when given by a landlord, be in the approved form.

Even if the landlord had an allowable reason to end the tenancy it would have required her to issue a notice that was compliant with Section 52. As per the tenant's submissions no notice that complied with the requirement to be given in the approved form was ever received by the tenant.

Section 51 states a tenant who *receives* a notice to end a tenancy under section 49 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. A tenant may withhold the amount authorized from the last month's rent and that amount is deemed to have been paid to the landlord.

As the tenant confirmed that he did not receive a Two Month Notice to End Tenancy for Landlord's Use as required to trigger compensation under Section 51, I find the tenant has failed to establish entitlement to return of his last month's rent.

Conclusion

Based on the above, I dismiss this Application for Dispute Resolution in its entirety 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: November 18, 2021

Residential Tenancy Branch