



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT, MNETC**

Introduction

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

- a Monetary Order pursuant to section 67 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both tenants and both landlords attended the hearing. All parties were given a full opportunity to be heard, to present sworn testimony, to make submissions, and to call witnesses.

The landlords confirmed receipt of the tenants' application for dispute resolution and evidentiary package, while the tenants' confirmed receipt of the landlords' evidentiary package. All parties are found to have been served in accordance with the *Act*.

The parties confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11

Issue(s) to be Decided

Are the tenants entitled to a monetary award? Can the tenants recover the filing fee?

Background and Evidence

Tenant E.O. provided testimony for the applicants and explained this tenancy began on September 3, 2016 and ended on June 30, 2021. Rent was \$2,725.00 per month and a security deposit of \$1,350.00 paid at the outset of the tenancy was returned.

The tenants have applied for a monetary award of \$34,050.00 along with a return of the \$100.00 filing fee.

The tenants argued that the landlords informed them that the landlords required vacant possession of the rental unit so it could be occupied by the landlords for their own personal use. The tenants explained they occupied the property on a month-to-month tenancy and were looking to re-sign a long-term lease with the landlords' property manager. The tenants detailed several steps they took to negotiate with this property manager, however, despite repeated attempts to connect with her, the tenants were unable to reach any agreement.

On May 14, 2021 the tenants spoke with landlord F.L. who informed them that he and his family intended to occupy the premises and stated that the tenants were required to vacate the property by September 2021. On June 1, 2021 the tenants again spoke with the landlords who repeated their intentions of occupying the property. On June 4, 2021 the tenants found a new rental home and provided notice to the landlords on their intention to vacate the property on June 30, 2021.

Analysis

Rule of Procedure 6.6 states, "The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application."

The tenants have applied for a monetary award of \$34,050.00 and must therefore demonstrate their entitlement to an award based on a breach of the *Act*, their tenancy agreement or the Regulations.

Section 44(1) of the *Act* states, "A tenancy ends only if one or more of the following applies. (a) the landlord gives notice to end the tenancy in accordance with one of the following:

(v) section 49 [landlord's notice: landlord's use of property]

As noted in section 49(4), in order for a notice to be valid, “A notice under this section must comply with section 52.”

Section 52 provides very specific requirements for a notice to end tenancy. They are as follows:

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, and

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

I find that the tenants were give no such notice and therefore were under no obligation to vacate the property. While I accept that the tenants were informed by the landlords of their intention to occupy the property, I find that I have no power to issue any compensation. The tenants moved-out of the property following two phone conversations with the landlords, however, received no Notices to End Tenancy and therefore are considered under the *Act* to have vacated under their own volition.

Section 51 of the *Act* clearly states that a tenant must receive a notice to end tenancy under section 49 to be entitled to any compensation. This position is supported by *Policy Guideline #50* which notes:

A tenant may apply for an order for compensation under section 51(2) of the RTA if a landlord who ended their tenancy under section 49 of the RTA has not:

- accomplished the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy, or
- used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice (except for demolition).

For these reasons, I dismiss the tenants' application without leave to reapply. The tenants must bear the cost of their own filing fee.

Conclusion

The tenants' 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: January 31, 2022

Residential Tenancy Branch