



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNDCT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- a monetary order for \$19,200.00 representing 12 times the amount of monthly rent, pursuant to sections 51(2) and 62 of the Act;
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 10:00 a.m. in order to enable the tenants to call into this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord testified that he served both tenants with copies of his evidence by registered mail. The landlord provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. The package was mailed January 4, 2022. The tenants are deemed served with the landlords' evidence on January 9, 2022.

At the outset, I advised the landlord of rule 6.11 of the Rules of Procedure (the "**Rules**"), which prohibits participants from recording the hearing. The landlord confirmed that they were not recording the hearing.

I also advised the landlord that pursuant to Rule 7.4, I would only consider written or documentary evidence that was directed to me in this hearing.

Preliminary Issue #1: Service of Documents

The landlord testified that the tenants did not serve the documents in accordance with the service provisions. One package was sent to both landlords listed on the tenancy agreement and should have been sent to each landlord separately. Further, the landlord

testified that the tenants sent the registered letter to the landlords' former address despite knowing that that residence had been sold in April 2021 and was the reason the landlord issued the Two Month Notice.

Based on the documentary evidence, written submission, and the oral testimony of the landlord, and in accordance with sections 89 and 90 of the Act, I find that:

- 1) the landlord has not been properly served with the notice of dispute resolution package which pertain to the tenant's application for a monetary order.

Accordingly, I dismiss the tenants' claim for a monetary order.

Preliminary Issue #2 -Application Dismissed

The tenants did not attend the hearing.

Rules 7.1 and 7.3 of the Rules of Procedure provide as follows:

Rule 7- During the Hearing

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party or dismiss the application, with or without leave to re-apply.

Further, Rule 7.4 states:

Rule 7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Accordingly, in the absence of any attendance at this hearing by the applicant (tenants) pursuant to Rule 7.4 as provided above, I order the tenant's application for a monetary order dismissed, without leave to reapply.

Issues to be decided:

Are the tenants entitled to:

- a monetary order for \$19, 200.00;
- reimbursement of the filing fee?

Background and Evidence

The landlord provided undisputed testimony. The landlord stated that in January 2021, he spoke with the tenant advising that a Two Month Notice was forthcoming. The landlords had listed their private residence for sale and planned to move into the rental property. The tenants were good tenants, long term tenants and so the landlord wanted to ensure they had ample time to find a rental unit in a challenging rental market.

On February 23, 2022, the landlord checked in with the tenants to see how their search was going and on February 28, 2021, issued the Notice with an effective date of April 30, 2021. The landlord stated the Notice was issued in accordance with Residential Tenancy Branch ("**RTB**") requirements on RTB forms. It was hand delivered to the tenants and delivery was witnessed the by landlord's wife.

In accordance with the Notice, the tenants were not charged rent for April 2021. The completion inspection took place on April 30, 2021, and the tenants were reimbursed in full for the pet damage and security deposit.

In the first two (2) weeks of May, the landlords did minor repairs of the rental home and moved into the home mid -May 2021. The landlords' private residence closed at the end of May 2021.

The landlords were also in the process of developing a 2.5 acre parcel they had planned to subdivide once sewer lines up to the property line was in place. The landlord ran into financial difficulty due to costs and over runs on the development. As a result, they made the decision to sell the (former) rental property. The landlord said that if he could have held off selling, he would have because once the sewer lines are in place, the property value would have increased exponentially.

The landlord said that he has acted in good faith. The decision to sell resulted from extenuating circumstances. Further, the completion date was December 15, 2021, and they physically lived in the residence up to and including December 13, 2021.

The landlord provided documentation to support the totality of his affirmed testimony.

Analysis

The tenants:

- 1) did not serve the landlords the Notice of Dispute in accordance with Rule 3 of the Rules and Policy Guideline #12;
- 2) the tenants did not attend the hearing to present their evidence.

As stated in "Preliminary Issue #1", I have dismissed the tenants' application for a monetary order, in part, on the basis the Notice of Dispute Resolution and evidence

package were not served in compliance with the Rules of Procedure, the Policy Guidelines, and the *Act*.

As stated in "Preliminary Issue #2, I have dismissed the tenants' application for a monetary order, without leave to reapply as they failed to attend the hearing and present their evidence.

Conclusion

The tenants' application for a monetary order in the amount of \$19,200.00 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: February 25, 2022

Residential Tenancy Branch