



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

The Applicant seeks an order for compensation pursuant to s. 51 of the *Residential Tenancy Act* (the “Act”) and for return of his filing fee.

F.T. appeared as the Applicant. The Respondent did not attend, nor did someone attend on their behalf.

The hearing began as scheduled in the Notice of Dispute Resolution as per Rule 7.1 of the Rules of Procedure. As the Respondent did not attend, it was conducted without their participation as provided for by Rule 7.3 of the Rules of Procedure.

The Applicant affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The Applicant confirmed that he was not recording the hearing.

The Applicant indicates that he served the Respondent with the Notice of Dispute Resolution and evidence by way of registered mail sent on November 1, 2021. The Applicant advises that the registered mail was sent to the address for his former rental unit and provides a copy of a Buyers Notice to Seller for Vacant Possession (the “Buyers Notice”), which shows the Respondent buyer’s address for service as that of the former rental unit.

I find that the Notice of Dispute Resolution and the Applicant’s evidence was served in accordance with s. 89 of the *Act*. Pursuant to s. 90 of the *Act*, I deem that the Respondent received the Applicant’s application materials on November 6, 2021.

Issue(s) to be Decided

- 1) Is the Applicant entitled to compensation equivalent of 12 times the monthly rent payable under the tenancy agreement?
- 2) Is the Applicant entitled to the return of his filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

The Applicant advises that he was the former tenant of the subject rental unit and provides a copy of the written tenancy agreement. The Applicant confirmed that he paid rent in the amount of \$1,900.00 on the first day of each month.

The Applicant says that the residential property comprises of a main house, which the Applicant resided with his family, and a second carriage house that was rented to other tenants.

The Applicant says that he received an email on May 20, 2021 from his former landlord, through his realtor, that included an attached Buyers Notice was signed by the named Respondent in the application. The Buyers Notice indicates that the Respondent or a close family member intended in good faith to move into the rental unit. The Applicant confirmed that he did not receive a formal Two-Month Notice to End Tenancy in form RTB-32, just the email and the Buyers Notice. The email lists that the Applicant was to move out by no later than July 31, 2021. The Applicant confirmed that he did move out before July 31, 2021.

The Applicant indicates that prior to moving out he spoke with the tenants of the carriage house, who indicated that they did not receive notice to leave their rental unit.

The Applicant indicates that he learnt from his former neighbours that the rental unit had not been occupied by the Respondent or a family member and that it had, in fact, be re-rented to new tenants.

The Respondent did not attend the hearing and provided no documentary evidence.

Analysis

The Applicant seeks an order for compensation under s. 51 equivalent to 12 times the rent he paid under his former tenancy agreement.

Pursuant to s. 51(2) of the *Act*, where a landlord has issued a notice to end tenancy pursuant to s. 49 a tenant may be entitled to compensation equivalent to 12 times the monthly rent payable under the tenancy agreement if the Landlord cannot establish:

- that the purpose stated within the notice was accomplished in a reasonable time after the effective date of the notice; and
- has been used for the stated purpose for at least 6 months.

Section 51(2) and Policy Guideline #50 are clear that the onus of proving that the purpose for ending the tenancy has been accomplished rests with the buyer.

Here, the Tenant did not receive a proper Two-Month Notice to End Tenancy as per s. 49, only receiving the Buyers Notice and the email of May 20, 2021, which set out the effective date the tenancy was to end.

To be entitled to compensation under s. 51, a tenant must receive a notice under s. 49. Section 49(7) of the *Act* states that a notice given under s. 49 must comply with the formal requirements set out under s. 52. Of particular importance is s. 52(e), which requires a notice, when given by a landlord, to be in the approved form. In these circumstances, the approved form for a Two-Month Notice to End Tenancy is RTB-32.

The Applicant admits that he only received the Buyers Notice and the email of May 20, 2021. He never received a Two-Month Notice to End Tenancy in the form RTB-32.

Given that the Applicant never received a proper notice under s. 49, he is not entitled to compensation under s. 51(2). Accordingly, the application is dismissed

Conclusion

The Applicant never received a proper notice under s. 49. Therefore, he is not entitled to compensation under s. 51(2). Accordingly, the application is dismissed without leave to reapply. As the Applicant was unsuccessful in his application, I further find that he shall bear his own costs for the application. I dismiss the Applicant's claim under s. 72 for return of his filing fee 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 14, 2022

Residential Tenancy Branch