



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, MNDCT, FFT

Introduction

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

- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67;
- a Monetary Order for compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 1:40 p.m. in order to enable the landlord to call into this teleconference hearing scheduled for 1:30 p.m. The tenant attended the hearing and were 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 tenant and I were the only ones who had called into this teleconference.

The tenant was advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The tenant testified that she was not recording this dispute resolution hearing.

The tenant confirmed her email address for service of this Decision.

The tenant testified that the landlord was served with a copy of this application for dispute resolution and her evidence via registered mail. The tenant entered into

evidence a registered mail receipt dated August 20, 2021. I find that the landlord was served with the tenant's application for dispute resolution and evidence in accordance with sections 88 and 89 of the *Act*. I find that the landlord was deemed served on August 25, 2021, five days after the documents were mailed, in accordance with section 90 of the *Act*.

Issues to be Decided

1. Is the tenant entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
2. Is the tenant entitled to a Monetary Order for compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51 of the *Act*?
3. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the tenant, not all details of the tenant's submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

The tenant provided the following undisputed testimony. This tenancy began on June 1, 2020 and ended on June 1, 2021. Monthly rent in the amount of \$1,100.00 was payable on the first day of each month. A security deposit of \$600.00 was paid by the tenant to the previous landlord. A written tenancy agreement was signed by both the tenant and the previous landlord and a copy was submitted for this application.

The tenant testified that the previous landlord informed her that the subject rental property was being listed for sale. The tenant testified that the previous landlord gave her a type written eviction letter dated March 15, 2021 which states:

As you were verbally informed January 30, 2021. The house and property you occupy at [the subject rental address] was being listed for sale.

On Saturday March 13 2021 I informed you verbally that the subjects have been removed and the house and property have been sold.

On this date March 15 2021 I must ask you to vacate the house and property by Noon, June 01, 2021

As per conditions of selling the house and property at [the subject rental property]

We deeply regret this situation, you have been a model Tenant.

The above letter is signed by the previous landlords.

The tenant testified that neither the previous landlord nor the landlord served her with RTB Form #32 Two Month Notice to End Tenancy For Landlord's Use of Property or Because the Tenant Does Not Qualify for Subsidized Rental Unit ("RTB Form #32"). The tenant testified that she moved out in accordance with the March 15, 2021 eviction letter.

The tenant testified that in July 2021 she found an advertisement to rent the subject rental property at a rental rate of \$2,200.00 per month. The tenant entered into evidence the above advertisement. The tenant testified that the rental rate was later dropped to \$2,000.00 per month and again dropped to \$1,900.00 per month.

The tenant testified that she had two friends contact the landlord about renting the subject rental property and they were able to view it. The tenant testified that the landlord was offering a six month lease. The tenant entered into evidence messages between the landlord and one of her friends which confirm the above testimony.

The tenant is seeking 12 months' rent compensation for failure of the landlord to move into the subject rental property. The tenant's application for dispute resolution also seeks reimbursement for the cost of a land title search in the amount of \$12.85 which was obtained as evidence for this hearing. The tenant is also seeking reimbursement for the \$100.00 filing fee from the landlord.

Analysis

Section 49(5) of the *Act* states:

(5)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 51 of the *Act* states:

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.

(1.2)If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(2)Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if

(a)steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or

(b)the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

(3)The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from

(a)accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or

(b)using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

[emphasis added]

Section 52 of the *Act* states:

52 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 [*confirmation of eligibility*], and

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

[emphasis added]

The triggering event for the possibility of compensation under section 51 of the *Act*, is the service on the tenant of a written Notice to End Tenancy pursuant to section 49 of the *Act*. That Notice to End Tenancy must conform to the form and content requirements of section 52 of the *Act*. Section 52(e) of the *Act* states that when a notice to end tenancy is given by the landlord, it must be in the approved form. In this case, the approved form is RTB Form #32. Therefore, to be eligible for compensation under section 51 of the *Act*, the tenant must have been served with RTB Form #32. The tenant was not served with RTB Form #32. Therefore, the tenant is not entitled to compensation under section 51 of the *Act*. The tenant's application is consequently dismissed without leave to reapply.

The eviction letter dated March 15, 2021 was not an enforceable way to end the tenancy and the tenant was under no obligation to vacate the subject rental property.

The dispute resolution process allows an applicant to claim for compensation or loss as the result of a breach of the *Act*, tenancy agreement or *Regulation*. With the exception of compensation for filing the application, the *Act* does not allow an applicant to claim compensation for costs associated with participating in the dispute resolution process. I dismiss the tenants claim for the cost of the land title search.

As the tenant was not successful in this application for dispute resolution, the tenant is not entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

The tenant's 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: February 15, 2022

Residential Tenancy Branch