



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNETC FFT

Introduction

The tenants seek compensation against their former landlord pursuant to sections 51 (twelve months' rent and a half-month's rent) and 72 (filing fee) of the *Residential Tenancy Act* ("Act").

Both tenants (though only one testified) and the landlord attended the hearing. No service issues were raised, the parties were affirmed, and Rule 6.11 of the *Rules of Procedure* was explained.

Only relevant evidence needed to resolve the preliminary issues of this dispute, and to explain the decision, is reproduced below.

Preliminary Issue: Absence of Notice to End Tenancy

The tenants seek compensation under subsection 51(2) of the Act, which states:

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 the landlord or purchaser, as applicable, does not establish that

- (a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and
- (b) the rental unit, except in respect of the purpose specified in section 49(6)(a), has been used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

This section can only be activated, however, when there is a notice given under [section 49](#) of the Act. A landlord may issue a notice to end a tenancy for landlord's use of property under section 49(3) of the Act. And a landlord who issues such a notice must ensure that a notice given under this section complies with [section 52](#) of the Act in both form and content. Moreover, compliance with section 52 of the Act includes the requirement that a landlord used the approved form. (In this dispute, the approved form would have been a [Two Month Notice to End Tenancy for Landlord Use of Property](#).)

In this dispute, there is no *Two Month Notice to End Tenancy for Landlord Use of Property* in existence because the landlord never issued any such notice. Rather, the landlord notified the tenants by email on November 15, 2020 that the tenancy would be ending two months later so that she could move into the property.

Given that the landlord never issued a notice to end the tenancy under section 49(3) and in the approved form, it follows that the e-mail "notice" had, in fact, no legal force or effect. The tenants did not have to abide by the e-mail notice to end the tenancy.

As there was no notice given under the Act, and, given that the issuing of a notice in the required, approved form, is required for there to be a basis for compensation under section 51 of the Act, the tenants' application for compensation must fail.

Preliminary Issue: Half-Month's Rent Claim

The tenants seek half a month's worth of rent (\$600.00) as compensation for the landlord not giving them this amount from rent that they paid for December. However, the tenant testified that they remained in the rental unit from January 1 to January 15, 2021 and did not pay any rent for that period. Thus, I am not persuaded that the tenants are entitled to any compensation given that they remained in the rental unit for two weeks without paying rent.

Claim for Application Filing Fee

Given the above findings, the tenants' application must be dismissed without leave to reapply. Accordingly, their claim to recover the cost of the application filing fee is dismissed.

Conclusion

The application is dismissed, without leave to reapply.

This decision is final and binding on the parties, and it is made on delegated authority under section 9.1(1) of the Act. A party's right to appeal the decision is limited to grounds provided under section 79 of the Act or by way of an application for judicial review under the *Judicial Review Procedure Act*, RSBC 1996, c. 241.

Dated: February 8, 2022

Residential Tenancy Branch