



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC

Introduction

This hearing was convened as a result of the tenants' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) for a monetary order in the amount of \$18,000.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, specifically, 12 months' compensation for landlord failing to comply with the reason stated on a 2 Month Notice to End Tenancy for Landlord's Use of Property (2 Month Notice).

The tenants and the landlord attended the teleconference hearing. The parties were introduced and gave affirmed testimony, were provided the opportunity to present their evidence in documentary form prior to the hearing and to provide testimony during the hearing. Only the evidence relevant to my decision has been included below. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As both parties confirmed that they had received documentary evidence and had the opportunity to review that evidence, I find the parties were sufficiently served under the Act.

Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance

Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

Also, the name of the landlord was changed from the agent for the landlord to the landlord's name, CDU by consent of the parties.

Issue to be Decided

- Are the tenants entitled to money owed for compensation for damage or loss under the Act?

Background and Evidence

A copy of a fixed-term tenancy was submitted in evidence. The parties also confirmed that the tenants were never issued a 2 Month Notice. The tenancy ended by way of a fixed-term tenancy where the tenants were advised at the start of the tenancy that the landlord would be moving back to the rental unit at the end of the fixed-term tenancy.

As a result of the above the tenants were advised that their claim for 12 months of compensation due to the landlords failing to comply with the reason stated on the 2 Month Notice was dismissed, without leave to reapply as the tenants were not served with a 2 Month Notice under the Act, which I will address further below.

Analysis

Based on the above, and considering the tenants' testimony and documentary evidence, and on a balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;

2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenants to prove first that a 2 Month Notice was issued. Once that has been established, the onus would then revert to the landlord to provide sufficiently evidence to support that the rental unit was used for a stated purpose in the 2 Month Notice.

Section 49 of the Act and sections 51(1) and 51(2) of the Act set out when a 2 Month Notice can be issued and the related compensation the tenant is owed when a 2 Month Notice is issued or when the reason stated in the 2 Month Notice is not complied with. In the matter before me, I find the tenancy ended by way of a fixed-term tenancy pursuant to section 45(2) of the Act (end of a fixed-term tenancy) and not section 49 of the Act. Therefore, I find the tenants were never issued a 2 Month Notice and are therefore not entitled to compensation under the Act related to a 2 Month Notice.

As a result, I find the tenants have failed to meet all four parts of the test for damage or loss described above and I dismiss the tenants' application without leave to reapply as a result.

Conclusion

The tenants' application fails in its entirety. There was no 2 Month Notice issued on the tenants by the landlord. This decision will be emailed to the parties.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: March 14, 2022

Residential Tenancy Branch