



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenants applied for:

- a monetary order in the amount of the monthly rent payable under the tenancy agreement, pursuant to section 51(1);
- a monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement under section 51(2); and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 1:53 P.M. to enable the landlord to call into this teleconference hearing scheduled for 1:30 P.M. The landlord did not attend the hearing. Tenant SB (the tenant) attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant represented tenant DB. 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.

At the outset of the hearing the attending party affirmed he understands it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

I accept the tenant's testimony that the landlord was served with the application and evidence (the materials) by registered mail on September 23, 2021, in accordance with section 89(1)(c) of the Act (the tracking number is recorded on the cover of this decision). The tenant affirmed he mailed the package to the landlord's address for service recorded on the tenancy agreement.

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail the landlord is deemed to have received the materials on September 28, 2021, in accordance with section 90(a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

Issues to be Decided

Are the tenants entitled to:

1. a monetary order in the amount of the monthly rent payable under the tenancy agreement?
2. a monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement?
3. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below. I explained rule 7.4 to the attending party; it is the tenants' obligation to present the evidence to substantiate the application.

The tenant affirmed the tenancy started on November 01, 2020 and ended on April 30, 2021. Monthly rent was \$1,200.00, due on the first day of the month. The landlord returned the security deposit of \$600.00. The tenancy agreement was submitted into evidence. Both parties signed section 2 of the tenancy agreement:

At the end of this time [tenancy term], the tenancy is ended and **the tenant must vacate the rental unit. This requirement is only permitted in circumstances prescribed under section 13.1 of the Residential Tenancy Regulation, or if this is a sublease agreement as defined in the Act.**

Reason tenant must vacate (required): unit owner moving in.

Residential Tenancy Regulation section number (if applicable): 13.1

(emphasis in the original)

The tenant affirmed the landlord informed him when the parties signed the tenancy agreement that he planned to move to the rental unit.

The tenant affirmed he did not receive a two month notice to end tenancy for landlord's use of the rental unit.

The tenant affirmed he moved to a property in the same neighbourhood, and he observed the landlord did not move to the rental unit. The tenant affirmed he contacted the occupants of the rental unit and they informed him that they were short term tenants.

The tenants are claiming compensation in the total amount of \$15,600.00.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove the case is on the person making the claim.

Section 51(1) of the Act provides the tenant is entitled to compensation in the amount of the monthly rent if the tenant receives a notice to end tenancy under section 49:

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.

(emphasis added)

Section 51(2) of the Act provides that the landlord, in addition to the amount payable under subsection (1), must pay an amount that is 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.

Based on the tenant's undisputed testimony, I find the tenant did not receive a notice to end tenancy under section 49 of the Act. As such, the tenant is not entitled to the compensation claimed, per section 51(1) of the Act.

I dismiss the tenants' claims for compensation under sections 51(1) and 51(3) of the Act.

As the tenants were not successful in this application, I find the tenants are not entitled to recover the filing fee.

Conclusion

I dismiss the tenants' application 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: March 15, 2022

Residential Tenancy Branch