



Dispute Resolution Services

Page: 1

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 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.

Both parties attended the hearing. The respondent was represented by NS. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand the parties are not allowed 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 \$5,000.00."

Preliminary Issue – named respondent

This application was submitted on November 07, 2021 against respondent landlord DM.

I accept the convincing and undisputed testimony offered by NS that DM passed away on February 19, 2022 and on February 23, 2022 NS learned that he is the executor of DM's estate.

The Act defines landlord as:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
- (i) permits occupation of the rental unit under a tenancy agreement, or
- (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);

Residential Tenancy Branch Policy Guideline 43 states:

Where a party to an Application for Dispute Resolution is deceased, the personal representative of the deceased's estate must be named. If the deceased is a respondent to an application, the personal representative must be named and served. If the applicant does not know the name of the deceased's personal representative at the time of filing an Application for Dispute Resolution, the deceased's name can be filled in on the application (e.g. John Doe, deceased). At the hearing, the arbitrator may amend the application to reflect the proper name of the estate.

The personal representative may be the person named as executor in the deceased's will, or the person who has been approved by the court to administer the estate by way of an estate grant.

The proper manner of naming the estate is as follows: John Smith, Personal Representative of the Estate of Mary Jones, Deceased.

Section 64(3)(c) of the Act allows me to amend the application, which I have done to remove DM and name as the respondent "NS, Personal Representative of the Estate of DM, Deceased".

Settlement

Pursuant to section 63 of the Act, an arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding settlement of all issues listed in this application for dispute resolution:

1. The respondent will pay the tenants the amount of \$7,500.00 by bank draft.
2. The respondent will send the bank draft by registered mail to the tenants' address recorded on the cover page of this decision by June 06, 2022.

Conclusion

As the parties have reached a settlement, I make no factual findings about the merits of this application.

To give effect to the settlement reached between the parties and as discussed with them during the hearing, pursuant to section 63(2) of the Act, I grant the tenants a monetary order in the amount of \$7,500.00. The monetary order for the June 06, 2022 payment may be served if the respondent defaults the June 06, 2022 payment. If the respondent fails to comply with this order the tenants may file this order in the Provincial Court (Small Claims) to be enforced as an order of that Court.

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: May 30, 2022

Residential Tenancy Branch