



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code: MNETC

Introduction

The tenant seeks compensation against their former landlord pursuant to section 51(2) of the *Residential Tenancy Act* ("Act").

Attending the hearing was the tenant, her support worker, and an agent for the landlord. (The landlord provided written authorization for the agent to act on his behalf.)

The parties were affirmed, no service issues were raised (other than the one item, below), and Rule 6.11 of the *Rules of Procedure* was explained.

Preliminary Issue: Service of Landlord's Evidence

The tenant testified that she served the Notice of Dispute Resolution Proceeding and her evidence on the landlord on October 9, 2021. The landlord acknowledged receiving the package by text, and the agent confirmed that the landlord received the tenant's package.

The agent testified that they served their package of evidence on the tenant on February 10, 2022. The landlord's package of evidence was returned unclaimed. There was a registered mail tracking number in evidence; the Canada Post tracking website did not provide any information as to what, exactly, happened with the package. That is, there is no evidence that the tenant deliberately refused to accept the package, or, that the package ever arrived at its destination. The tenant testified that she has never received any documentation or documentary evidence from the landlord.

Given that I am not satisfied that the landlord's evidence was properly served on the tenant, the landlord's documentary evidence is not accepted and will not be considered in this application.

Issue

Is the tenant entitled to compensation under section 51(2) of the Act?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the issue of this dispute, and to explain the decision, is reproduced below.

The tenancy began March 1, 2020 and ended September 1, 2021. Monthly rent was \$1,000.00. A copy of the written tenancy agreement was in evidence.

On July 1, 2021 the landlord served a *Two Month Notice to End Tenancy for Landlord's Use of Property* (the "Notice"). A copy of the Notice was in evidence. Page two indicated that the landlord or their spouse, the child of the landlord or the landlord's spouse, or the father or mother of the landlord or the landlord's spouse would occupy the rental unit. The tenant did not dispute the Notice, and she vacated on September 1, 2021.

In early October the tenant was visiting some friends in the area, and they told her that the rental unit "still looked empty." The tenant went to the property and observed that the rental unit's blinds and windows were open, and the place looked just like it was when she vacated the property a month earlier. She photographed the interior of the rental unit basement suite from outside, and this photograph was tendered into evidence. The photograph depicts an empty rental unit, devoid of furniture.

It was then on October 4 that the tenant filed an application for dispute resolution seeking compensation under section 51(2) of the Act.

The tenant further testified that she never returned to the rental unit or to the property after her visit in early October. Work "got insane" and, besides, she remarked that she did not want to trespass on the property in order to conduct any further investigation.

The landlord's agent testified that practically the entire landlord's family – who were residing in the upper part of the house during the tenancy – contracted COVID in early September 2021. The family had to quarantine inside the house, and due to their low physical energy and because of the circumstances, nobody from the landlord's family who had intended to move into the rental unit were able to do so in September. Ultimately, however, the landlord's family moved into and occupied the rental unit.

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 their case is on the person making the claim. The tenant seeks compensation under section 51(2) of the Act.

Section 51(2) of the Act states that

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.

In this application, the tenant was only able to testify to, and provide evidence in support of, the fact that none of the landlord's family moved into and occupied the rental unit up to approximately October 4, 2021. The tenant did not provide any evidence, direct or circumstantial, that the rental unit was not used for the stated purpose (as indicated on the Notice) for a period of at least six months after the Notice was issued. Nor did the tenant provide any evidence or make any argument as to what a reasonable period after the effective date of the Notice (that is, September 1, 2021) would have covered, which excludes an additional six-month period. In short, there is no evidence before me to find that the rental unit sat unoccupied from September 2, 2021 to February 1, 2022, not including whatever reasonable period would also have to be considered.

Taking into careful consideration all the evidence before me, it is my finding that the tenant has not proven, on a balance of probabilities, that she is entitled to compensation under section 51(2) of the Act. Therefore, the tenant's application must be dismissed without leave to reapply.

Conclusion

The application is dismissed, without leave to reapply.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: May 16, 2022

Residential Tenancy Branch