



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, MNDCT, FFT

Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlords did not attend the hearing. I accept the Tenant’s evidence that the Landlords were served with the application for dispute resolution, notice of hearing and all evidence (the “Hearing Package”) by registered mail on November 25, 2022 in accordance with Section 89 of the Act. Postal evidence indicates that the Landlords collected the mail. 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 I find that the Landlords are deemed to have received the Hearing Package on November 30, 2022. The Tenants were given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

The Tenants, in error, did not set out the last name of the Landlord identified in their application as DJ. The Tenants ask to amend the application to include this Landlord’s last name. Given this undisputed evidence of an error and noting that the tenancy

agreement sets out this Landlord's last name as stated by the Tenants, I amend the application to correct the error and include this Landlord's last name.

Issue(s) to be Decided

Are the Tenants entitled to the monetary amounts claimed?

Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

The tenancy under written agreement for a basement suite in a house started on January 1, 2021 and ended on November 22, 2021. Rent of \$1,200.00 was payable on the first day of each month. The security deposit has been dealt with. The Landlords gave the Tenants a two month notice to end tenancy for landlord's use dated November 2, 2021 (the "Notice"). The Notice sets out that the child of the landlord will occupy the unit. The Notice sets out an effective date of January 5, 2022.

On the date of the Tenants' move out of the unit the Landlords informed the Tenants that the Landlords were not going to be occupying the unit as they were moving to another location. The house was advertised online for a tenancy start date of January 1, 2022. The Tenants observed a new family occupying the house in mid-February 2022. The Landlords did not pay the Tenants any compensation for having received the Notice and the Tenants claim \$1,200.00. The Landlord's child did not occupy the unit for at least 6 months and the Tenants claim \$14,400.00.

Analysis

Section 51(1) of the Act provides that 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. Given the undisputed evidence that the Tenants received the Notice and did not receive the equivalent of one month's rent, I find that the Tenants have substantiated an entitlement to **\$1,200.00**.

Section 51(2) of the Act provides 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.

Based on the Tenants' undisputed evidence that the Landlords' child did not occupy the unit for any length of time after the effective date of the Notice I find that the Tenants have substantiated an entitlement to **\$14,400.00** (12 x 1,200.00).

Section 51(3) of the Act provides that the director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as applicable, from

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

As the Landlords did not attend the hearing to give any evidence of extenuating circumstances, I do not excuse the Landlord from paying the \$14,400.00.

As the Tenants have been successful with their claims, I find that the Tenants are entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$15,700.00**.

Conclusion

I grant the Tenants an order under Section 67 of the Act for **\$15,700.00**. If necessary, this order may be filed in the Small Claims Court and 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 Act.

Dated: June 30, 2022

Residential Tenancy Branch