



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNETC, FFT**

Introduction

This hearing dealt with the Applicant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. An Order for compensation from the Landlord related to a Notice to End Tenancy for Landlord's Use of Property pursuant to Section 51(2) of the Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlords and the Applicant attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Landlords acknowledged receipt of the Applicant's dispute resolution proceeding package and evidence via Canada Post registered mail on December 9, 2021 (deemed served on December 14, 2021). The Applicant acknowledged receipt of the Landlords' evidence package via Canada Post registered mail on June 21, 2022 (deemed served on June 26, 2022). I noted the Canada Post Tracking Numbers on the cover page of this decision. Pursuant to Sections 88, 89 and 90 of the Act, I find that both parties were duly served with all documents related to the hearing in accordance with the Act.

Issues to be Decided

1. Is the Applicant entitled to an Order for compensation from the Landlord related to a Notice to End Tenancy for Landlord's Use of Property?
2. Is the Applicant entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy on January 15, 2016. The fixed term ended on February 1, 2017, then the tenancy continued on a month-to-month basis. Monthly rent was \$2,325.00 payable on the first day of each month. A security deposit of \$1,150.00 was collected at the start of the tenancy and was returned to the Applicant by the Landlord.

The Landlords testified that they never served a Section 49 notice to end tenancy on the Applicant. The Applicant disagrees, and said he received a notice 'text' message from the Landlords. The text states:

Wed, Jul 28, 07:13

Hi [REDACTED], I wanted to give you warning before the 31st. Our daughters have been looking to purchase a house in the last 10 months and have lost out on every offer they have presented due to bidding wars. They have asked to move into the house with room mates versus paying high rent elsewhere until the market slows down and they can purchase their own house, the extra rooms rented out will cover all their expenses and give them the independence they have been trying so hard to get —but outbid on every offer presented.

So that's two months notice to end end of September?

Yes, legally notice would be July 31 -sept 30

The Applicant confirmed he did not receive a formal Section 49 notice to end tenancy for Landlord's Use and he neglected to request this from the Landlords. The Applicant testified that in early October 2021, the Landlords rented out his rental unit to another family. He questioned the Landlords on this, and they did not deny it.

The Landlords returned three weeks rent to the Applicant which the Applicant asserts is the Section 51(1) equivalent of one month's rent payable under the tenancy agreement less some money for needed work/repairs to the Applicant's rental unit.

The Applicant uploaded a Section 49 notice to end tenancy for Landlord's Use which the Landlords had served on the lower unit tenant on July 31, 2021. The reason for the two month notice was that the rental unit would be occupied by a child of the landlord or landlord's spouse.

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 Applicant claims the notice to end he received in the July 28, 2021 text is a Section 49 notice. That section states:

Landlord's notice: landlord's use of property

49 ...

(2) *Subject to section 51 [tenant's compensation: section 49 notice], a landlord may end a tenancy*

(a) *for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be*

(i) *not earlier than 2 months after the date the tenant receives the notice,*

(ii) *the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and*

(iii) *if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or*

...

(3) *A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.*

...

- (7) *A notice under this section must comply with section 52 [form and content of notice to end tenancy] and, in the case of a notice under subsection (5), must contain the name and address of the purchaser who asked the landlord to give the notice.*
- (8) *A tenant may dispute*
 - (a) *a notice given under subsection (3), (4) or (5) by making an application for dispute resolution within 15 days after the date the tenant receives the notice, or*
 - (b) *a notice given under subsection (6) by making an application for dispute resolution within 30 days after the date the tenant receives the notice.*
- (9) *If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant*
 - (a) *is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and*
 - (b) *must vacate the rental unit by that date. (emphasis mine)*

The Applicant applies for compensation pursuant to Section 51(2) of the Act. It states:

Tenant's compensation: section 49 notice

51 ...

- (2) *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.

Compensation available pursuant to Section 51(2) of the Act results when the landlord, after serving a Section 49 notice to end tenancy on their tenant, does not establish that the stated purpose was accomplished for at least six months' duration within a reasonable period after the tenants vacated.

A Section 49 notice to end tenancy, which is form #RTB-32, must comply with the form and content requirements of Section 52 of the Act. Section 52 of the Act states:

Form and content of notice to end tenancy

52 *In order to be effective, a notice to end a tenancy must be in writing and must*

- (a) be signed and dated by the landlord or tenant giving the notice,*
- (b) give the address of the rental unit,*
- (c) state the effective date of the notice,*
- (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,*
 - (d.1) for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and*
- (e) when given by a landlord, be in the approved form. (emphasis mine)*

An "approved form" is defined by the legislation and means the form approved by the director under Section 10(1) of the Act for the purposes of the section in which it appears.

I find that the July 28, 2021 text message from the Landlords to the Applicant was not a formal Section 49 notice. This text message notification was not "in the approved form", which as noted above, is form #RTB-32. Section 49(7) of the Act provides that a notice under Section 49 must comply with the form and content requirements of Section 52. Section 52 provides that the notice must be in the approved form; this is a legal imperative with respect to how a tenancy can end based on landlord's use of property.

The Applicant may have acted on the July 28, 2021 text message from the Landlords purporting to end the tenancy, however, I find this does not give rise to compensation pursuant to Section 51(2) of the Act. The Landlords were aware of the approved form to end tenancy based on Landlord's Use and I find they did not serve this approved form on the Applicant. I find the tenancy ended pursuant to Section 44(1)(d) of the Act.

I dismiss the Applicant's claim for compensation based on Section 51(2) of the Act without leave to re-apply. As he has been unsuccessful in his claim, I also decline to grant him recovery of the application filing fee.

Conclusion

The Applicant's application is dismissed.

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: July 14, 2022

Residential Tenancy Branch