



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 related to a notice to end for Landlord's Use 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 Landlord, his Legal Counsel, 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 Applicant confirmed that she personally served the Landlord with the Notice of Dispute Resolution Proceeding package on March 2, 2022 using a process server (the "NoDRP package"). The Landlord confirmed receipt of the NoDRP package on March 2, 2022. I find that the Landlord was served with the NoDRP package for this hearing on March 2, 2022, in accordance with Section 89(1)(a) of the Act.

The Landlord served the Applicant with their evidence via Canada Post registered mail on June 29, 2022. The Landlord uploaded the Canada Post registered mail receipt and tracking number as proof of service. I noted the registered mail tracking number on the

cover sheet of this decision. I find that the Landlord's evidence was deemed served on the Applicant on July 4, 2022 pursuant to Sections 88(c) and 90(a) of the Act.

Issues to be Decided

1. Is the Applicant entitled to an Order for compensation related to a notice to end for Landlord's Use?
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 April 1, 2020. The fixed term was to end April 1, 2021, then would have continued on a month-to-month basis. Monthly rent was \$1,550.00 payable on the first day of each month.

The Applicant believed that her evidence package was included in the NoDRP package; however, the Landlord did not receive any evidence in the NoDRP package from the Applicant.

The Applicant testifies that she received an emailed notice to end tenancy for landlord's use from the Landlord on January 1, 2021. The email is as follows:

*[Landlord's name <Landlord's email>
Fri 2021-01-01 4:49 PM
To: [Applicant's name <Applicant's email>*

*Hello [Applicants' names]
Hope you had a great Christmas holiday season. I want to inform you that the trailer Your renting we will be moving it from that location and listed for sale. I want to give you lots of notice to find a new rental for April 1st 2021.
Please let me know if you have any questions or concerns.*

*Regards, [Landlord's name]
[Landlord's phone number]*

The Applicant confirmed that the Landlord had not issued them a formal two month notice. The Landlord submitted that the Applicant vacated the rental unit on March 15, 2021.

In February 2022, the Applicant noticed that the Landlord had re-rented the rental unit to someone else. The mobile unit also had not been moved.

The Landlord also confirms that he did not issue a formal two month notice on the Applicant. The Landlord's Legal Counsel submits that whether or not the Applicant acted on the email, the tenancy had not ended pursuant to Section 49 of the Act. The approved form would have been form #RTB-32 Two Month Notice to End Tenancy For Landlord's Use of Property or Because the Tenant Does Not Qualify for Subsidized 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 Applicant claims the notice to end she received in the January 1, 2021 email 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*

...

- (5) *A landlord may end a tenancy in respect of a rental unit if*
- (a) *the landlord enters into an agreement in good faith to sell the rental unit,*
 - (b) *all the conditions on which the sale depends have been satisfied, and*
 - (c) *the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:*
 - (i) *the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;*
 - (ii) *the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, 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 tenants, 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 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 the January 1, 2021 email from the Landlord to the Applicant was not a formal Section 49 notice. This email 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 January 1, 2021 email from the Landlord purporting to end the tenancy, however, I find this does not give rise to compensation pursuant to Section 51(2) of the Act. 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 she has been unsuccessful in her claim, I also decline to grant her 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