



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, MNSD, FFT

Introduction

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

- a monetary order of \$7,500.00 for compensation because the landlord ended the tenancy and has not complied with the *Act* or used the rental unit for the stated purpose, pursuant to section 51;
- authorization to obtain a return of \$200.00 from the tenants' security deposit of \$1,250.00 total, pursuant to section 38; and
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 72.

"Tenant LK" and "tenant SS," did not attend this hearing, which lasted approximately 58 minutes from 1:30 p.m. to 2:28 p.m. The landlord, the landlord's agent, and tenant CP ("tenant") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord, the landlord's agent, and the tenant all confirmed their names and spelling. The landlord and the tenant provided their email addresses for me to send this decision to both parties after the hearing.

The landlord confirmed that she owns the rental unit, and she provided the rental unit address. She stated that her agent had permission to speak on her behalf at this hearing.

The tenant stated that he had permission to represent tenant LK and tenant SS at this hearing (collectively "tenants").

Rule 6.11 of the Residential Tenancy Branch (“RTB”) *Rules of Procedure* (“Rules”) does not permit recording of this hearing by any party. At the outset of this hearing, the landlord, the landlord’s agent, and the tenant all separately affirmed, under oath, that they would not record this hearing.

I explained the hearing and settlement processes to both parties. They had an opportunity to ask questions, which I answered. Neither party made any adjournment or accommodation requests. Both parties confirmed that they were ready and wanted to proceed with this hearing.

The landlord’s agent confirmed receipt of the tenants’ application for dispute resolution hearing package. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenants’ application.

The landlord’s agent stated that the landlord served two copies of the landlord’s evidence to the tenant and tenant LK only, on June 17, 2022, by way of registered mail. He provided two Canada Post tracking numbers verbally during this hearing. He provided the mailing address during this hearing, which he said was indicated on the tenants’ application. He claimed that tenant LK signed for the mail and sent a text message to the landlord that she received it and would not participate in this hearing.

The tenant stated that he did not receive any evidence from the landlord, but tenant LK may have received it if she signed for the mail. He agreed that the landlord used the correct mailing address, which was indicated in this application. He said that he did not have the landlord’s evidence in front of him during this hearing.

The landlord’s agent said that the landlord did not serve tenant SS because he is a minor. The tenant claimed that tenant SS is now 18 years old, as of the date of this hearing.

As I did not consider the landlord’s evidence in this decision, I do not find it necessary to record any findings of service to the tenants.

Preliminary Issue – Dismissal of Tenants’ Application

Security Deposit

During this hearing, both parties agreed that the landlord retained \$250.00 from the tenants’ security deposit of \$1,250.00 total and returned the remainder of \$1,000.00 to

the tenants. Both parties agreed that the tenants allowed the landlord to retain \$50.00 from the security deposit for a FOB remote that tenant SS lost.

The landlord's agent stated that tenant LK allowed the landlord, by way of text message and verbally, to retain the remaining \$200.00 from the tenants' security deposit, for a move-out elevator strata fine paid by the landlord on behalf of the tenants. He said that the landlord provided an invoice and receipt for the above fine, as evidence for this hearing.

During this hearing, the tenant agreed to allow the landlord to retain the remaining \$200.00 from the tenants' security deposit, for the move-out elevator strata fine. I informed the tenant that this portion of the tenants' application was dismissed without leave to reapply. The tenant confirmed his understanding of and agreement to same.

Monetary Compensation for Notice to End Tenancy for Landlord's Use of Property

At the outset of this hearing, the tenant stated that the tenants filed their application for monetary compensation of \$7,500.00, related to a notice to end tenancy for landlord's use of property. During this hearing, both parties agreed that the landlord did not provide a 2 Month Notice in the approved RTB form to the tenants.

Sections 49, 51 and 52 of the *Act*, state in part (my emphasis added):

- 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), (5) or (6) **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,
 ...
- (7) A notice under this section must comply with section 52 [form and content of notice to end tenancy].**
- 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

- (a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or*
- (b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.*

52 **In order to be effective, a notice to end a tenancy must be in writing and must**
 (e) when given by a landlord, be in the approved form.

Both parties provided undisputed, affirmed testimony that the tenants did not receive a 2 Month Notice in the approved RTB form from the landlord.

Accordingly, the tenants' application for a monetary order of \$7,500.00, related to a notice to end tenancy for landlord's use of property, pursuant to section 51 of the *Act*, is dismissed without leave to reapply. I verbally informed both parties of the above decision and information, during this hearing. Both parties confirmed their understanding of same.

Filing Fee

As the tenants were unsuccessful in this application, I find that they are not entitled to recover the \$100.00 filing fee from the landlord. This claim is also dismissed without leave to reapply. I verbally informed both parties of the above decision during this hearing. Both parties confirmed their understanding of same.

Amending Tenants' Application

The tenant claimed that the tenants applied for monetary compensation related to a notice to end tenancy, in error. He said that the tenants' application for \$7,500.00 was for emotional distress, harassment and the landlord moving the tenants' furniture, and he included this information in the online RTB details of dispute.

The landlord's agent said that the landlord was confused by the tenants' application and evidence. He stated that the landlord provided evidence to dispute that the tenants were served with a notice to end tenancy, since the tenants provided notice to the landlord to vacate the rental unit. He claimed that the tenants also provided a monetary order worksheet, including \$175.00 for mailing costs, to the landlord.

I informed the tenant that I would not amend the tenants' application to add a new claim for monetary compensation for emotional distress, harassment and the landlord moving the tenants' furniture, at this hearing. I notified him that the tenants applied for monetary compensation related to a notice to end tenancy, and they provided evidence on the online RTB dispute website, regarding same. I informed him that I did not receive a monetary order worksheet from the tenants on the online RTB dispute website. The tenant said that he did not have a copy of the monetary order worksheet in front of him during this hearing and he did not know what it said.

I find that the landlord does not have proper notice of the tenants' monetary claims to respond to it at this hearing. I do not have a monetary order worksheet with a monetary breakdown, and the tenant did not have a copy in front of him during this hearing to confirm any of the monetary claims. I find that the tenant provided confusing details and evidence with this application, regarding the tenants' monetary claims. I also note that the hearing took 58 minutes of the total 60-minute hearing time, due to the confusion regarding the tenants' application and evidence. There was insufficient time to deal with the other new monetary claims indicated by the tenant at this hearing.

Conclusion

The tenants' entire application is dismissed without leave to reapply.

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: July 07, 2022

Residential Tenancy Branch