



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 tenants' application pursuant to section 67 of the *Residential Tenancy Act* (the "Act") for a monetary award for damages and loss and to recover their filing fees pursuant to section 72.

Both parties attended the hearing and were given an opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. In accordance with the Act, Residential Tenancy Rule of Procedure 6.1 and 7.17 and the principles of fairness and the Branch's objective of fair, efficient and consistent dispute resolution process parties were given an opportunity to make submissions and present evidence related to the claim. The parties were directed to make succinct submissions, and pursuant to my authority under Rule 7.17 were directed against making unnecessary submissions or remarks not related to the matter at hand.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The landlord testified that they received the tenant's materials and had not served the tenant with their materials. Based on the undisputed testimonies I find the landlord duly served in accordance with sections 88 and 89 of the Act.

Pursuant to Residential Tenancy Rule of Procedure 3.15 and the principles of procedural fairness a respondent must serve their evidentiary materials on the applicant. As the landlord did not serve the tenant with their materials I exclude it from consideration.

Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This periodic tenancy originally began on August 1, 2009. The monthly rent at the end of the tenancy was \$1,575.00 payable on the first of each month. A security deposit of \$800.00 was paid at the start of the tenancy and has been dealt with in accordance with the Act. The respondents are the purchaser of the rental property from the previous landlord.

The tenant submits that they were served with a Notice to End Tenancy for Landlord's Use and the tenancy ended on June 1, 2021 in accordance with that notice. The tenant confirmed repeatedly that they had provided a copy of the Notice they were served with into evidence.

The tenant submits that the named respondents did not occupy the rental unit within a reasonable timeframe and now seeks a monetary award pursuant to section 51 of the Act. The parties both made some submissions regarding whether the rental unit was occupied by the landlord.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 51 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 compensation equivalent to 12 times the monthly rent under certain circumstances.

Section 49 provides that a landlord may end a periodic tenancy if the landlord intends in good faith to occupy the rental unit. Subsection 49(7) provides that: A notice under this section must comply with section 52 [*form and content of notice to end tenancy*]

Section 52 provides that:

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.

The tenant testified that they were served with a Notice to End Tenancy for Landlord's Use and said they have uploaded a copy of that document into evidence. No valid Notice is included in the documentary evidence. In addition to the original tenancy agreement and photographs of the rental property, the tenant has uploaded 16 identical copies of one document into evidence. The document is not a Notice to End Tenancy but a Schedule of Parties which provides the name of the original landlord with whom the tenancy agreement was entered as an Applicant. In the absence of a proper Notice to End Tenancy submitted into evidence I am not satisfied that any notice was issued.

Based on the paucity of evidence by the tenant I am not satisfied that there has been any notice to end tenancy issued pursuant to section 49 which would trigger the monetary compensation under section 51. I find no basis for a monetary award and dismiss the tenant's application in its entirety.

Conclusion

The tenant's application is dismissed in its entirety 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 7, 2022

Residential Tenancy Branch