



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenants applied for:

- a monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement under section 51(2); and
- an authorization to recover the filing fee for this application, under section 72.

Respondent AN called into this teleconference at the date and time set for the hearing of this matter. AN was assisted by AR (the respondent). Although I waited until 1:42 P.M. to enable the applicants (tenants) to connect with this teleconference hearing scheduled for 1:30 P.M., the applicants did not attend.

I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the respondent and I were the only persons who had called into this teleconference.

The respondent confirmed receipt of the notice of hearing via registered mail sent by the tenants. The respondent affirmed he did not receive evidence documents. The respondent did not submit response evidence.

Based on the respondent's undisputed testimony, I find the tenants served the notice of hearing in accordance with section 89(1)(c) of the Act. Per Rule of Procedure 3.14, I excluded the evidence documents submitted by the tenants, as the respondent affirmed he did not receive evidence documents.

The application states:

I want compensation because the landlord ended the tenancy and has not complied with the Act or used the rental unit/site for the stated purpose:

During tenancy landlord ordered end of tenancy notice and gave 4 months notice, upon further investigation no permits were applied for and approved during the acceptable time. Therefore I am seeking compensation as the landlord appears to be acting in bad faith and not following appropriate guidelines under law.

Amount requested: \$8,004.00.

The respondent affirmed he purchased the rental unit on May 07, 2021 and he did not ask the seller to serve a notice to end tenancy, as he was not aware the rental unit had tenants. The respondent asked for empty possession of the rental unit.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that 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 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 onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Per section 51(2) of the Act, the landlord or the purchaser must pay the compensation in the amount equivalent of 12 times the monthly rent payable under the tenancy agreement if a notice to end tenancy was served under section 49 and if the landlord or purchaser does not establish that the stated purpose for ending the tenancy was accomplished within a reasonable period:

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.

(emphasis added)

The onus of proof in this application shifts to the respondent if the tenant proves, on a balance of probabilities, that the landlord served a notice to end tenancy under section 49 of the Act.

The tenant did not attend the hearing and did not provide evidence to prove that he received a notice to end tenancy under section 49 of the Act. Based on the respondent's convincing undisputed testimony, I find the respondent did not ask the seller to serve a notice to end tenancy under section 49 of the Act.

Thus, the tenants are not entitled to a monetary compensation under section 51(2) of the Act.

As the tenants were unsuccessful in their application, they must bear the cost of the filing fee.

Conclusion

I dismiss the tenants' application 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 13, 2022

Residential Tenancy Branch