



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held on August 9, 2022. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 51

One of the Respondents (the Seller) was present at the hearing with his wife, and legal counsel. The second Respondent (the Buyer) was not present but was represented at the hearing by legal counsel. The Tenant was at the hearing by herself. All parties provided affirmed testimony.

Both respondents, the seller and the buyer, confirmed receipt of the Tenant's Notice of Dispute Resolution Proceeding and evidence package but both parties confirmed they did not receive a copy of the Tenancy Agreement, or the screenshots of the text messages as part of the evidence. The Tenant had no corroborating proof showing what was included in the packages she sent. Without further proof as to what was in the packages she sent, I am not satisfied she served all of her evidence in accordance with the Act. That being said, I find both Respondents are sufficiently served with the Notice of Dispute Resolution Proceeding, and the other evidence (aside from the tenancy agreement and the text message screenshots), as they acknowledged getting it. Only the Tenancy Agreement, and the text message screenshots are not admissible.

Counsel for the buyer provided registered mail tracking information to show that he sent his evidence package to the Tenant on July 26, 2022. Although the Tenant stated she did not get this package until 2 days ago, I find it is deemed served 5 days after it was

sent, on July 31, 2022. I find this package was sufficiently served. The Seller did not provide any evidence.

All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Tenant entitled to compensation for money owed or damage or loss under section 51 of the Act?

Background and Evidence

Both parties agree that monthly rent was \$2,995.00 per month. The Tenant stated that sometime in early March 2021, the Seller came to her, as her current Landlord at that time, and said they were planning on selling the property and that the house could be bought and demolished. The Tenant stated that on or around March 12, 2021, the Seller came to her with a copy of the Buyer's Notice to Seller for Vacant Possession (the Buyer's Notice) and said that the Buyer was likely going to have his son move in, once they took over ownership. The Tenant stated that the Seller also presented her with a Mutual Agreement to End Tenancy (the Mutual Agreement). The Tenant confirmed that she fully read and understood all portions of the mutual agreement, and signed it that day.

A copy of the Mutual Agreement was provided into evidence, as was a copy of the Buyer's Notice. The Buyer's Notice was signed on March 12, 2021, by the Buyer, and was addressed to the Seller.

The Tenant stated that she is seeking 12 month's compensation pursuant to section 51 of the Act because the rental house is still vacant, 13 months later.

The Buyer's Counsel provided written submissions, as well as an evidence package. Buyer's Counsel stated that the Tenant should not be entitled to received 12 month's compensation under section 51 of the Act, because no 2 Month Notice to End Tenancy for Landlord's Use was issued under section 49 of the Act. Rather, the Tenant opted to sign the Mutual Agreement. Buyer's Counsel stated that the Buyer gave the Buyer's

Notice to the Seller on March 12, 2021, but it was not intended to be given to the Tenant, and it was the Seller who decided to provide the Tenant with a copy of this. Buyer's Counsel stated that the Buyer asked for a 2 Month Notice to be issued, via the Buyer's Notice. However, no 2 Month Notice to End Tenancy for Landlord's Use was ever issued. Buyer's Counsel stated that the Seller gave the Tenant some compensation alongside the mutual agreement. Buyer's Counsel asserts that it is not reasonable to find that the Buyer's Notice is equivalent to a section 49 Notice to End Tenancy for Landlord's Use, given the Buyer's Notice was not addressed to the Tenant, and it was also not on the approved form.

The Tenant feels like she was misled and feels like the Buyer's Notice that she Seller showed her should count as a 2 Month Notice to End Tenancy for Landlord's Use.

Analysis

With respect to the Tenant's request to obtain 12 months' worth of rent as compensation based on the Notice, pursuant to section 51 of the Act, I note the following portion of the Policy Guideline #50 – Compensation for Ending a Tenancy:

ADDITIONAL COMPENSATION FOR ENDING TENANCY FOR LANDLORD'S USE OR FOR RENVOATIONS AND REPAIRS

A tenant may apply for an order for compensation under section 51(2) of the RTA if a landlord who ended their tenancy under section 49 of the RTA has not:

- accomplished the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy, or*
- used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice (except for demolition).*

A tenant may apply for an order for compensation under section 51.4(4) of the RTA if the landlord obtained an order to end the tenancy for renovations and repairs under section 49.2 of the RTA, and the landlord did not:

- accomplish the renovations and repairs within a reasonable period after the effective date of the order ending the tenancy.*

The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under sections 49 or 49.2 of the RTA or that they used the rental unit for its stated purpose under sections 49(6)(c) to (f). If this is not established, the amount of compensation is 12 times the monthly rent that the tenant was required to pay before the tenancy ended.

Under sections 51(3) and 51.4(5) of the RTA, a landlord may only be excused from these requirements in extenuating circumstances.

As noted above, the onus is on the Landlords to demonstrate that they accomplished the stated purpose for ending the tenancy, as laid out on the 2 Month Notice to End Tenancy for Landlord's Use (pursuant to section 49) or that they have an extenuating circumstance.

I also note the following portion of the Act:

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

(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.

(3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from

(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or

(b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Despite all of the above, I find the issue I must first address is whether or not the Tenant is entitled to claim 12 month's compensation, pursuant to section 51(2) of the Act, despite not being given a formal 2 Month Notice to End Tenancy for Landlord's Use, pursuant to section of the Act.

I have reviewed the documents, testimony, and evidence, and I do not find the Buyer's Notice, which was given to the Seller, meets the form and content requirements under section 52 of the Act. It is not in the approved form for a 2 Month Notice under section 49 of the Act. The approved form for a section 49(5) Notice, where a buyer requests vacant possession, is a specific form titled RTB 32. It is several pages long, has specific grounds, fields, and situation specific information contained in it. Further, the Buyer's Notice was given to the Seller, not to the Tenant. I accept that the Seller showed the Buyer's Notice to the Tenant at the time the Mutual Agreement was signed. However, I find it was the Tenant's choice to sign the Mutual Agreement, where she agreed to the following:

NOTE: This form is NOT a Notice to End Tenancy. Neither a Landlord nor a Tenant is under any obligation to sign this form. By signing this form, both parties understand and agree the tenancy will end with no further obligation between landlord(s) or tenant(s). If you are the tenant, this may include foregoing any compensation you may be due if you were served a Notice to End Tenancy. If you have questions about tenant or landlord rights and responsibilities under the Residential Tenancy Act or the Manufactured Home Part Tenancy Act, contact the Residential Tenancy Branch using the information provided at the bottom of this form before you sign.

The Tenant confirmed in the hearing that she fully read and understood what she was signing on the Mutual Agreement. I find the tenancy ended by way of this mutual agreement, as there was not valid 2 Month Notice to End Tenancy issued. Given no 2 Month Notice was issued, I find the Tenant is not eligible for compensation under section 51(2) of the Act, as this section of the Act is only triggered when a valid Notice is given under section 49 of the Act.

I dismiss the Tenant's application, in full.

Conclusion

The Tenant's application is dismissed, in full, 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: August 10, 2022

Residential Tenancy Branch