



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

The Tenant seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- an order pursuant to s. 51 for compensation equivalent to 12 times the rent payable under the tenancy agreement; and
- return of his filing fee pursuant to s. 72.

T.M. appeared as the Tenant and was joined by T.R.. A.L. appeared as agent for the Landlord.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other’s application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other’s application materials.

Preliminary Issue – Style of Cause

The tenancy agreement lists the Landlord differently than the Notice of Dispute Resolution. At the outset of the hearing, I clarified with the Landlord’s agents who, in fact, was the Landlord. The Landlord’s agent advised that the corporate Landlord as

listed in the Notice of Dispute Resolution is correct, though the correct legal name has the suffix "inc.".

Policy Guideline #43 provides guidance with respect to the naming of parties and specifies that the legal names of the parties with correct spelling is to be used. I proposed the style of cause be amended to reflect the correct legal spelling as advised by the Landlord's agent. No objections were raised with respect to doing so. Accordingly, I amend the style of cause as specified by the Landlord's agent.

Issues to be Decided

- 1) Is the Tenant entitled to compensation equivalent to 12 times the monthly rent payable under the tenancy agreement?
- 2) Is the Tenant entitled to the return of his filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the former tenancy:

- The Tenant took occupancy of the rental unit on October 1, 2020.
- The Landlord obtained vacant possession of the rental unit on January 31, 2022.
- Rent of \$900.00 was due on the first day of each month.

A copy of the tenancy agreement was put into evidence.

The Landlord's agent advised that the current Landlord purchased the property in May 2021. The Landlord's agent indicates that she and the Tenant were in discussions in the summer of 2021 about ending the tenancy. According to the Landlord's agent, she says that the intention was for her husband's parents to move into the rental unit and act as caretakers for the property. I was directed to a text message in the Landlord's evidence between the agent and her in-laws dated September 20, 2021 in support of this position.

I was further advised by the Landlord's agent that the Tenant had discussed his intention of purchasing a house of his own. I am told that the Tenant did end up

purchasing a property and notified the Landlord of the same in December 2021. The Tenant testified that he had been looking for a property to purchase for some time but that he felt pressured to find a new place quickly due to his conversations with the Landlord's agent about the impending end to the tenancy. As mentioned above, the Tenant vacated the rental unit on January 31, 2022.

The Landlord's agent confirmed that her father-in-law and mother-in-law had changed their plans and would not be occupying the rental unit, notifying the agent of this in January 2022. She confirmed that the Landlord rented the unit to new tenants, who took possession in March 2022.

I enquired with the Landlord if any Two-Month Notice to End Tenancy was served on the Tenant. The Landlord's agent directed me a mutual agreement to end tenancy in the Landlord's evidence she says she provided to the Tenant sometime in early December 2021. She says that the Tenant never signed and returned it as he had purchased a new property. The Tenant indicates that he could not recall receiving the mutual agreement to end tenancy, though may have. The Tenant was also unable to confirm receiving a Two-Month Notice to End Tenancy.

Analysis

The Tenant applied for compensation equivalent to 12 times the monthly rent payable under the tenancy agreement.

Pursuant to s. 51(2) of the *Act*, a tenant may be entitled to compensation equivalent to 12 times the monthly rent payable under the tenancy agreement when a notice to end tenancy has been issued under s. 49 and the landlord or the purchaser who asked the landlord to issue the notice, as applicable under the circumstances, does not establish:

- that the purpose stated within the notice was accomplished in a reasonable time after the effective date of the notice; and
- has been used for the stated purpose for at least 6 months.

The problem with the present application is that the Tenant was not served with a notice to end tenancy under s. 49, a point that is not in dispute. Notices issued under s. 49 must comply with the formal requirements under s. 52 of the *Act* as per s. 49(7) of the *Act*. Under the circumstances, this would require the Landlord to use standard form RTB-32. No Two-Month Notice to End Tenancy in form RTB-32 was provided to me as none appears to have ever issued by the Landlord.

The parties may have had informal discussions with respect to the end of the tenancy throughout the summer and fall of 2021. However, a tenant's right to compensation under s. 51 does not crystalize until a notice to end tenancy was issued under s. 49. That did not occur here. As a general comment, a tenant is under no obligation to vacate a rental unit based on informal discussions. A landlord must issue a notice to end tenancy in accordance with the *Act* and until they do so, the tenancy continues.

The Landlord provided a mutual agreement to end tenancy, which is in the standard form provided by the Residential Tenancy Branch. Strictly speaking, as the mutual agreement to end tenancy was never signed by the Tenant, it is not relevant. However, it is clear from the standard form of the mutual agreement to end tenancy that it is not a notice to end tenancy, which states at the top of the form:

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.

As no notice to end tenancy was ever issued under s. 49 by the Landlord, the Tenant vacated the rental unit voluntarily. I find that the Tenant is not entitled to any compensation under s. 51. Accordingly, his application is dismissed.

Conclusion

The Tenant is not entitled to compensation under s. 51 of the *Act* as no notice to end tenancy was ever issued by the Landlord. His claim under s. 51 of the *Act* is dismissed without leave to reapply.

The Tenant was unsuccessful in his application. I find that he is not entitled to the return of his filing fee. His application for its return under s. 72 of the *Act* 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: October 18, 2022

Residential Tenancy Branch