



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETCT

Introduction

The Tenants seek an order under s. 51 of the *Residential Tenancy Act* (the “Act”) for compensation equivalent to 12 times the rent payable under the tenancy agreement.

D.S. appeared as the Tenant. The Tenant was joined by his father, G.S., who spoke on his behalf. I was advised by the Tenant that his co-tenant could not attend the hearing. E.S. appeared as agent for the Landlord. The Landlord’s agent advised that the Landlord would not be attending.

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 Tenant advised that their application and evidence was served on the Landlord. The Landlord’s agent acknowledged its receipt without issue. Based on its acknowledged receipt without objection, I find that pursuant to s. 71(2) of the *Act* that the Landlord was sufficiently served with the Tenants application materials.

The Landlord’s agent advised that the Landlord’s response evidence was served on the Tenants via registered mail sent on September 28, 2022. The Tenant objected to service on the basis that it was received on October 7, 2022. The Tenant advised that he was not away when the registered mail package had been received and obtained it from the carrier at the door.

The Landlord’s agent provided me with tracking number. I have reviewed the tracking information, which shows that D.S. signed for the package on October 3, 2022. Rule

3.15 of the Rules of Procedure require a respondent's evidence be received by the applicant at least 7 days prior to the hearing. Based on the tracking information provided, I find that the Tenant did receive the evidence on October 3, 2022 (not October 7, 2022), which complies with Rule 3.15.

I find that the Landlord's evidence was served in accordance with s. 89 of the *Act*. Based on the tracking information, I find that it was received by the Tenants on October 3, 2022.

Issue to be Decided

- 1) Are the Tenants entitled to compensation equivalent to 12 times the monthly rent payable under the tenancy agreement?

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 tenancy:

- The Tenants took occupancy of the rental unit on June 1, 2019.
- The Landlord obtained vacant possession of the rental unit on July 31, 2021.
- Rent of \$1,300.00 was payable on the first day of each month at the end of the tenancy.
- The Tenants paid a security deposit of \$650.00 and a pet damage deposit of \$650.00 to the Landlord.

A copy of the tenancy agreement was put into evidence by the Tenants.

I am advised by G.S. that the property in question sold and that the purchaser asked for vacant possession. I was directed to an email from the Landlord dated March 3, 2021 which is in the Tenants' evidence. The copy provided indicates the following:

Hello [D.S.] & [J.S.]

Thanks for your support last weekend.

We have an accepted offer and a backup offer in place now.

Both offers have subjects and subjects are not removed yet.

Both buyers indicate that they are planning to occupy the place.

We have few proposals for you and you let me know which works best for you.

[...]

I have redacted identifying information from the reproduction in the interest of protecting the parties' privacy. I have reproduced the email provided in its entirety. The email provided appears to be incomplete

The Landlord's agent advised that no notice to end tenancy had been issued and emphasized that the Tenants vacated pursuant to a mutual agreement to end tenancy. Both the Tenants and the Landlord provided a copy of the mutual agreement to end tenancy, in the standard form provided by the Residential Tenancy Branch (RTB-8), which shows both all parties signed the agreement and that the tenancy would end at 8:00 PM on July 31, 2021.

G.S. acknowledged that no notice to end tenancy had been served but emphasized that the email clearly specified that the tenancy would end based on the purchasers wishing to occupy the rental unit. I am advised that the purchasers relisted the unit for rental and was directed to an advertisement in the Tenants' evidence showing it was available for viewing starting August 1, 2021 and was available for rental on September 1, 2021.

G.S. advised that the Tenants received one month's rent in compensation from the Landlord prior to the end of the tenancy. The Landlord's agent argued that the Tenants received more compensation than they were entitled to under the *Act*.

G.S. argued that the Tenants were provided with false information in the emails from the Landlord, including a list of options and that the Tenants security deposit and/or pet damage deposit would be withheld should one of the options not be chosen. G.S. argued that the Tenants were coerced into signing the mutual agreement to end tenancy. The Landlord's agent denied the allegation of coercion.

Analysis

The Tenants apply 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 Tenants were 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 was ever issued by the Landlord. The email dated March 3, 2021 is not proper notice to end tenancy as it is not in the proper form.

The wording of s. 51 is clear, compensation is only available when a notice to end tenancy issued under s. 49. As no notice to end tenancy was issued, I find that the Tenants are not entitled to compensation under s. 51 of the *Act*.

Though this disposes of the matter, I pause to note that the mutual agreement to end tenancy states the following 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.

(Emphasis Added)

It is clear on the face of the standard form of the mutual agreement to end tenancy that the Tenants were aware that they were under no obligation to sign the agreement, that doing so may include foregoing compensation for which they would be entitled if a notice to end tenancy were served, and that they could contact the Residential Tenancy Branch if they had questions prior to signing. The Tenants failed to do heed the warning set out in the form.

The Tenants are adults. They signed the form and did so without regard to the warning or to the legal effect it would have for their entitlement to compensation under s. 51 of the *Act* had a notice to end tenancy been served under s. 49. The Tenants did have a choice. They could have refused to sign the mutual agreement to end tenancy, which would have forced the Landlord to serve a notice to end tenancy. They did not do so and it is undisputed that the Landlord did not serve a notice to end tenancy.

I find that the Tenants are not entitled to compensation under s. 51 of the *Act*. Their application is dismissed without leave to reapply.

Conclusion

The Tenants' 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: October 11, 2022

Residential Tenancy Branch