



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCT, MNETC, FFT**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement under section 51(2) and 67;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

AF and JK attended for the tenants and stated the remaining two named tenants AF and KF are their children. The tenants are referenced in the singular.

The advocate JD attended on behalf of the landlord who did not attend.

Both parties had opportunity to provide affirmed testimony, present evidence and make submissions. The hearing process was explained.

Each party acknowledged receipt of the other's documents. I find each party served the other in compliance with the *Act*.

Each party confirmed they were not recording the hearing.

Each party provided an email address for the delivery of the Decision.

Issue(s) to be Decided

Is the tenant entitled to the relief requested?

Background and Evidence

The hearing was scheduled for 1-hour and lasted 74 minutes. The parties submitted considerable conflicting testimony, documents and argument. Not all asserted facts and arguments referenced in the hearing are reproduced in this Decision. I refer to only selected, key, admissible evidence upon which my findings are based.

The tenant filed this application on April 14, 2022. They claimed they are entitled to compensation of 12 months rent of \$2,200.00 for a total claim of \$26,400.00 as the landlord did not move into the unit as stated in the Two Month Notice.

The advocate at the hearing claimed as follows. The named landlord moved into the unit with her spouse and child on October 8, 2021 shortly after the tenant moved out and has continuously lived there ever since, although she was out of the country from October 13, 2021 to January 11, 2022. The unit has been the landlord's primary residence and they have no other residence. The advocate submitted documentary evidence and did not call witnesses. The landlord submitted recent tax and property documents showing the property is registered to the landlord and her spouse. The landlord MK and her spouse did not testify.

A copy of the tenancy agreement was submitted. The parties agreed on the background of the tenancy as follows:

INFORMATION	DETAILS
Type of Tenancy	Monthly
Beginning Date	2016 (5-year tenancy)

Vacancy Date	October 1, 2021
Rent payable on first of month	\$2,200.00
Security deposit	Returned at end of tenancy
One month compensation	Provided

The parties agreed the landlord requested the tenant to vacate and gave them a copy of a Notice as follows:

INFORMATION	DETAILS
Type of Notice	Tenant Occupied Property - Buyers Notice to Seller for Vacant Possession ("the Buyers Notice")
Date of Notice	July 24, 2021
Effective Date of Notice	October 1, 2021
Service	Acknowledged by tenant
Move out	October 1, 2021
Reasons for Issuance	Occupation by buyer

Neither party submitted a notice in the RTB form.

The tenant accepted the Buyers Notice, did not file a dispute, and moved out as requested.

The tenant testified they received one month's rent as compensation as required under the Act. Their security deposit was returned.

The tenant testified the landlord did not move into the unit. They stated they returned several times within the 6-month period after moving out to collect their mail. The unit appeared empty. There were no signs of occupation, such as a car in the driveway. The tenant asked a neighbour if anyone was living in the unit and was told someone (not the landlord) came in the evening to do renovations. The tenant asserted the landlord sold the property. The tenant submitted a real estate listing in which the property is indicated as “sold” within the 6-month period after moving out.

The landlord denied the tenant’s assertions. T

Summary of Claims

The tenant requested an award of 12 times the monthly rent and reimbursement of the filing fee.

The landlord requested the tenant’s claims be dismissed without leave to reapply

Analysis

The tenant seeks 12 months rent as compensation in the amount of \$10,000.00 as well as reimbursement of the filing fee. The landlord requested the application be dismissed.

Rule of Procedure 6.6 states, “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.”

The tenant has applied for a monetary award and must therefore demonstrate their entitlement to an award based on a breach of the Act, their tenancy agreement or the Regulations.

The tenant’s claim is addressed.

Tenant's Claim for Compensation - Section 51

Section 44(1) of the Act states:

A tenancy ends only if one or more of the following applies.

(a) the landlord gives notice to end the tenancy in accordance with one of the following:

...

(v) section 49 [landlord's notice: landlord's use of property]

As noted in section 49(4), for a notice to be valid, "A notice under this section must comply with section 52."

Section 52 provides very specific requirements for a notice to end tenancy. To be effective, a notice to end a tenancy must be in writing and must be signed and dated by the landlord or tenant giving the notice, give the address of the rental unit, state the effective date of the notice, except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy, and when given by a landlord, be in the approved form. (underlining added)

Section 51 of the Act clearly states that a tenant must receive a notice to end tenancy under section 49 to be entitled to any compensation. This position is supported by Policy Guideline #50 which notes:

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).

I find that the tenant was not given a notice to end tenancy and therefore was under no obligation to vacate the property. They are considered to have vacated under their own volition. I find that I have no power to issue any compensation.

For these reasons, I dismiss the tenant's application for compensation and for reimbursement of the filing fee under this heading without leave to reapply.

Conclusion

The tenant's 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 05, 2022

Residential Tenancy Branch