



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenants under the Residential Tenancy Act (the Act) on March 7, 2022, seeking:

- Compensation under section 51(2) of the Act; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 1:30 P.M. on November 1, 2022, and was attended by the Tenant T.A., who provided affirmed testimony. The Landlord did not attend. The Tenant was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Tenant was advised that pursuant to rule 6.10 of the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure), interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The Tenant was asked to refrain from speaking over me and any other participants that may attend the hearing and to hold their questions and responses until it was their opportunity to speak. The Tenant was also advised that personal recordings of the proceeding were prohibited under the Rules of Procedure and confirmed that they were not recording the proceedings.

The Rules of Procedure state that the respondent must be served with a copy of the Application and Notice of Hearing. As the Landlord did not attend the hearing, I confirmed service of these documents as explained below. The Tenant provided affirmed testimony in the hearing that the Notice of Dispute Resolution Proceeding

(NODRP) package, which includes the Application and the Notice of Hearing, as well as the evidence package were sent to the Landlord on March 17, 2022, by registered mail. The Tenant provided me with the registered mail tracking number which I have recorded on the cover page of this decision. During the hearing, the Tenant checked the tracking information online for the registered mail stating that the registered mail was sent on March 17, 2022, and delivered and signed for on March 26, 2022. Further to this, the Tenant stated that they know that the Landlord received the above noted documents as they served them with documentary evidence in response. As a result, and as Residential Tenancy Branch (Branch) records indicate that documentary evidence was submitted by the Landlord in relation to this hearing on August 12, 2022, I find that the Landlord was served with the above noted documents on March 26, 2022.

Branch records indicate that the NODRP was sent to the Tenants by e-mail on March 15, 2022. Based on the above, and as there is no evidence before me to the contrary, I find that the NODRP was served on the Landlord in accordance with section 59(3) of the Act and rule 3.1 of the Rules of Procedure as I am satisfied that it was sent to the Landlord on March 17, 2022, by registered mail.

Rule 7.1 of the Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. I verified that the hearing information contained in the NODRP was correct, and I note that the Tenant had no difficulty attending the hearing on time using this information. As the Tenant and I attended the hearing on time and ready to proceed, and I was satisfied as set out above that the Landlord was deemed served with the NODRP for the purpose of the Act on March 26, 2022, I therefore commenced the hearing as scheduled at 1:30 P.M. on November 1, 2022, despite the absence of the Landlord, pursuant to rule 7.3 of the Rules of Procedure. Rule 7.3 of the Rules of Procedure states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party. Although the teleconference remained open for the full duration of the 28-minute hearing, no one attended the hearing on behalf of the Landlord.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in accordance with the Rules of Procedure, unless stated otherwise in this decision, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the Tenant, a copy of the decision and any orders issued in their favor will be emailed to them at the email address provided in the Application.

Issue(s) to be Decided

Are the Tenants entitled to compensation under section 51(2) of the Act?

Are the Tenants entitled to recovery of the filing fee under section 72 of the Act?

Background and Evidence

The Tenant stated that although a written tenancy agreement exists, it was not submitted for my review and consideration as they could not locate it. The Tenant stated that the one-year fixed term tenancy began on approximately October 27th or 28th of 2019 and that rent in the amount of \$1,400.00 was due each month at the time the tenancy ended.

The Tenant stated that they were served with the Two Month Notice and that the tenancy ended on approximately June 28, 2021, as a result. The Two Month Notice in the documentary evidence before me is on a 2021 version of the form, is signed and dated April 14, 2021, contains the address of the rental unit, has an effective date of June 30, 2021, and states that the notice has been served because the Landlord or the Landlord's spouse intend in good faith to occupy the rental unit.

The Tenant stated that after they complied with the Two Month Notice and vacated the rental unit, they kept in touch with their previous neighbors who advised them that no one moved into the rental unit. The Tenant stated that they last checked with their previous neighbors in October of 2021, at which time they were advised that no one had moved into the property yet. The Tenant stated that the property then went up for sale and was subsequently sold in either December of 2021 or January of 2022 according to MLS as well as friends in the area, who saw a sold sign on the property. The Tenant submitted a copy of the MLS listing for the property in support of their testimony as well as a copy of the Two Month Notice.

The Tenant stated that it was not fair of the Landlord to serve them with the Two Month Notice stating that they were going to occupy the rental unit, if that was not the case, and therefore sought \$16,800.00 in compensation pursuant to section 51(2) of the Act as they state the Landlord failed to comply with the stated purpose for ending the

tenancy set out in the Two Month Notice within a reasonable period of time after the effective date of the Two Month Notice and to use it for the stated purpose for at least six months duration thereafter.

Analysis

Based on the documentary evidence and affirmed testimony before me, I am satisfied that a tenancy to which the Act applies existed between the parties. I am also satisfied that the Tenants were served with a Two Month Notice pursuant to section 49(3) of the Act, and that the tenancy ended as a result of the Two Month Notice.

Although documentary evidence was submitted to the Branch by the Landlord on August 12, 2022, rule 7.4 of the Rules of Procedure states that evidence must be presented by the party who submitted it, or by the parties' agent, and that if a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered. As neither the Landlord nor an agent acting on behalf of the Landlord appeared at the hearing to present this evidence or make any submissions, despite the fact that I find that they were served with notice of this hearing as required by the Act and the Rules of Procedure, I therefore have not considered the documentary evidence submitted to the Branch by the Landlord in making this decision.

Section 51(2) of the Act states that 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:

- the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and
- 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.

I accept the undisputed documentary evidence and affirm testimony before me for consideration from the Tenants that the Landlord or their spouse never moved in and occupied the rental unit as required by the two-month notice, and that the rental unit was subsequently sold in December of 2021 or January of 2022. Further to this, I note that neither the Landlord nor an agent acting on their behalf, appeared at the hearing to make any arguments or present any evidence for my consideration, despite the fact that

the Landlord bore the burden of proof in this matter with regards to satisfying me on a balance of probabilities that they used the rental unit for the stated purpose set out in the Two Month Notice within a reasonable period of time after the effective date of the notice, and for at least six months duration thereafter. As no one appeared on behalf of the Landlord to argue that extenuating circumstances prevented the Landlord from either accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or using the rental unit for that stated purpose for at least six months duration, beginning within a reasonable period after the effective date of the notice, I therefore find that section 51(3) of the Act does not apply.

Pursuant to section 51(2) of the Act, I therefore grant the Tenants' Application and I find that the Tenants are entitled to monetary compensation in the amount of \$16,800.00, which represents an amount that is equivalent of 12 times the monthly rent I am satisfied was payable under the tenancy agreement at the time the tenancy ended. As the Tenants were successful in their Application, I also award them recovery of the \$100.00 filing fee pursuant to section 72(1) of the Act. Pursuant to section 67 of the Act, I therefore grant the Tenants a Monetary Order in the amount of \$16,900.00 and I order the Landlord to pay this amount to the Tenants.

Conclusion

Pursuant to section 67 of the Act, I grant the Tenants a Monetary Order in the amount of **\$16,900.00**. The Tenants are provided with this Order in the above terms and the Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Branch under Section 9.1(1) of the Act.

Dated: November 3, 2022

Residential Tenancy Branch