



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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DECISION

Dispute Codes MNETC FFT

Introduction

The applicants sought compensation pursuant to section 51(2) of the *Residential Tenancy Act* (the “Act”). They also sought to recover the cost of the application filing fee pursuant to section 72 of the Act.

Preliminary Issue: Particulars of the Claim and section 51(2)

The applicants filed this application seeking compensation under section 51(2) of the Act. This section of the legislation permits a tenant whose tenancy was ended by way of a *Two Month Notice to End Tenancy for Landlord’s Use of Property* to request compensation (equal to twelve months of rent) when the landlord or a purchaser does not end up occupying the property as they said they were going to do in the notice.

In this application, I note that the notice to end the tenancy (the “Notice”) was given in January 2022, a few months before a purchaser ended up purchasing the property. The purchaser is not a party to this dispute. The Notice was not completed in full at the time that it was given. From my reading of the application, the sale was nowhere near being completed when the respondent landlords gave the applicant tenants the Notice.

The particulars of the application shed light on the applicants’ claim (which I clarified and confirmed with the applicants during the hearing):

Seeking 12 months rent at \$1400 per month due to failure to follow procedures for ending tenancy for landlord's use of property. Served the two month notice with reason being "all of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice ...". However, no purchaser information provided and house was listed for sale privately after the notice was served. House is still vacant as of April 12, 2022.

It is my finding that the applicants' claim is based on the respondents' alleged failure to issue a proper notice to end tenancy with all of the required information in that notice. While the landlords may not have issued a notice to end the tenancy that complied with the Act (specifically subsections 49(4) and subsection 49(7)), the present claim for compensation is made under section 51(2) of the Act.

Such a claim may only be made when a notice to end tenancy was given under section 49 of the Act. It is not clear that any such notice was ever properly given. If it was, then the applicants may have a claim for compensation, but it would not be by way of a claim under section 51(2) of the Act. As briefly explained to the applicants, if a claim for compensation is ever made against their former landlords for not issuing the correct (or a correctly completed) notice to end the tenancy then they would be required to prove that they are entitled to compensation. Compensation claims are in most cases made pursuant to sections 7 and 67 of the Act.

Also, I explained that in a claim for compensation under section 51(2), if a purchaser does not occupy a rental unit for the reasons set out in a notice to end tenancy, the application would need to be made against the purchaser as the respondent.

The above-noted explanations of the relevant sections of the Act are not, and may not be construed as, findings of fact or law in respect of whether any future application for compensation against the landlords or purchasers would be successful. The merits of any such application would be exclusively within the decision-making authority of another arbitrator.

Conclusion

For the reasons given above, the 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 Act.

Dated: December 20, 2022

Residential Tenancy Branch