



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing dealt with the Tenant's application under the *Residential Tenancy Act* (the "Act") for:

- compensation in the amount of \$1,600.00 due to the Landlords having ended the tenancy and not complied with the Act or used the rental unit for the stated purpose pursuant to section 51; and
- authorization to recover the filing fee for this application from the Landlords pursuant to section 72.

The Landlords and the Tenant attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

All attendees at the hearing were advised that the Residential Tenancy Branch Rules of Procedure prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Service of Dispute Resolution Documents

The parties did not raise any issues with respect to service. The Landlords acknowledged receipt of the notice of dispute resolution proceeding package and the Tenant's documentary evidence (collectively, the "NDRP Package"). I find the Landlords were served with the NDRP Package in accordance with sections 88 and 89 of the Act. The Tenant acknowledged receipt of the Landlords' documentary evidence. I find the Tenant was served with the Landlord's evidence in accordance with section 88 of the Act.

Issues to be Decided

1. Is the Tenant entitled to compensation under section 51 of the Act?
2. Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

The rental unit was a lower suite in the Landlords' home. This tenancy commenced on February 1, 2020 and ended on February 28, 2022. Rent was \$1,600.00 per month. Copies of the tenancy agreement have been submitted into evidence.

The Tenant stated that she is seeking compensation in the form of one month's rent for having to move out of the rental unit. The Tenant testified being told by the Landlords that the Tenant had two months' notice to move out. The Tenant referred to a text message from one of the Landlords, BE, received on January 31, 2022 which states in part:

We feel super bad about giving you notice right now and you have been absolutely amazing. Please let us know if there is anything we can do to help your situation. As mentioned, if you do want to come stay with us while you find something, we would be more than happy to have you. And remember the buyer of the house might want to keep you as a (sic) amazing tenant

The Tenant testified that she was shocked the Landlords had sold their property and started looking for a new place immediately. The Tenant testified she found a new place on February 10, 2022 and moved out on February 28, 2022.

The Tenant referred to clause 20 of the parties' tenancy agreement addendum which states:

20. Communication: The Landlord and Tenant agree to communicate and respond to one another in a respectful manner (via text message, email, in-person, or phone, etc.) within 24 hours (unless otherwise agreed upon).

The Tenant stated that the parties always accepted communication via text message, which was why she treated the text message from BE as binding.

In response, the Landlords explained that they had signed an offer to purchase a new home on January 31, 2022. The Landlords testified that the decision was a spontaneous one since a home in their preferred neighbourhood came up. The Landlords testified they called the Tenant on the same day after signing the offer and explained that they were selling their property, and that it would be up to the buyer to decide whether to keep the Tenant on or not. The Landlords testified that they assured the Tenant no matter the buyer decided, the Tenant would have the Landlords' support. The Landlords denied having asked the Tenant to move out.

The Landlords referred to text messages dated February 8, 2022, in which they told the Tenant that the buyer was assuming the Tenant would stay unless the Tenant says otherwise. The Landlords testified that they had told the Tenant at the time about the buyer wanting to keep the Tenant on. The Landlords testified that the Tenant informed them of her intention to leave on February 10, 2022. The Landlords testified that the Tenant ended up giving less than one month's notice for moving out. The Landlords confirmed there was a move-out inspection and the Tenant's deposits were returned in full.

The Landlords testified they were aware of other reasons why the Tenant decided to leave. The Landlords testified that the Tenant had split up with a partner in the previous fall and had told the Landlords on a few occasions that she was not sure if she could make the rent. The Landlords testified that the Tenant was uncertain about continuing the tenancy with a new owner that she was unfamiliar with. The Landlords testified that the Tenant asked about the ethnicity of the new owner.

The Tenant testified she felt she had to move out due to the "notice" that she received on January 31, 2022. The Tenant acknowledged she had wanted to know who she would be living with and stated that she has allergies due to certain ethnic foods. The Tenant testified that the parties had discussed about the Tenant looking after the Landlords' child in exchange for reduced rent. The Landlords denied that they had approached the Tenant with such an offer.

Analysis

1. Is the Tenant entitled to compensation under section 51 of the Act?

Based on the Tenant's submissions, I find the Tenant is seeking compensation under section 51(1) of the Act, although the claim type selected by the Tenant on this application is for tenants who are seeking compensation under section 51(2) of the Act.

Sections 51(1) and 51(2) of the Act state as follows:

Tenant's compensation: section 49 notice

51 (1) A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

[...]

(2) 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

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

(emphasis added)

In order for a tenant to be entitled to compensation under either section 51(1) or section 51(2) of the Act, the landlord must have issued a notice to end tenancy under section 49 of the Act.

For example, section 49(5) of the Act permits a landlord to end a tenancy if:

- (a) the landlord enters into an agreement in good faith to sell the rental unit,

- (b) all the conditions on which the sale depends have been satisfied, and
- (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
 - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
 - (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

Section 49(7) of the Act requires a notice to end tenancy under section 49 to comply with section 52, which states:

Form and content of notice to end tenancy

- 52 In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
 - (b) give the address of the rental unit,
 - (c) state the effective date of the notice,
 - (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
 - (e) when given by a landlord, be in the approved form.

In this case, I find the Landlords have not issued a notice to end tenancy under section 49 of the Act. I find the Landlords did not provide the Tenant with any document that had the requisite information listed under section 52 of the Act, whether in the Residential Tenancy Branch approved form or otherwise.

I further note that based on a plain reading of clause 20 of the parties' tenancy agreement addendum, I do not find this clause to stand for the proposition that the parties have agreed to accept service via text messages.

I accept the Landlords' testimony that they gave the Tenant notice regarding the sale of their property, and that it would be up to the buyer to decide whether to keep the Tenant on. I find the Landlords' testimony to be consistent with the parties' text message record. In particular, I find the text message from BE to the Tenant dated January 31,

2022 specifically reminded the Tenant that the buyer might want to keep her as a tenant. Therefore, I find that these text messages from the Landlords do not constitute a notice to end tenancy. In my view, there is a clear distinction between giving notice about the sale of the property versus giving notice that the tenancy will be ending.

I find the Tenant ultimately decided to move out of the rental unit after learning about the sale. I accept the Landlords' uncontradicted testimony that they had told the Tenant about the buyer willing to keep her on. I find the Tenant was not required to move out of the rental unit under these circumstances and could have continued her existing tenancy with the new owner if she wished.

Based on the foregoing, I conclude the Tenant is not entitled to any compensation from the Landlords under section 51 of the Act, as there was no notice to end tenancy issued under section 49.

2. Is the Tenant entitled to recover the filing fee?

The Tenant has not been successful in this application. I decline to award the Tenant recovery of her filing fee under section 72(1) of the Act.

Conclusion

The Tenant's application is dismissed in its entirety without leave to re-apply.

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: December 06, 2022

Residential Tenancy Branch