



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNETC, FFT**

Introduction

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

1. An Order for compensation from the Landlord related to a Notice to End Tenancy for Landlord's Use of Property pursuant to Section 51 of the Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord, the Tenant, and the Tenant's Witness attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Tenant testified that she served the Landlord with the Notice of Dispute Resolution Proceeding package and evidence for this hearing on April 28, 2022 by Canada Post registered mail (the "NoDRP package"). The Tenant referred me to the Canada Post registered mail receipt with tracking number submitted into documentary evidence as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The Landlord confirmed receipt of the NoDRP package. I find that the Landlord was deemed served with the NoDRP package five days after mailing them, on May 3, 2022, in accordance with Sections 89(1)(c) and 90(a) of the Act.

The Landlord stated he did not serve his evidence package on the Tenant although he uploaded it on the RTB website. Rules of Procedure 3.15 states:

3.15 Respondent's evidence provided in single package: *Where possible, copies of all of the respondent's available evidence should be submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office. The respondent's evidence should be served on the other party in a single complete package.*

The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

3.16 Respondent's proof of service: *At the hearing, the respondent must be prepared to demonstrate to the satisfaction of the arbitrator that each applicant was served with all their evidence as required by the Act and these Rules of Procedure. (emphasis mine)*

RTB Policy Guideline #12-Service Provisions assists parties understand the requirements of service of documents. Part 5 of RTB Policy Guideline #12 outlines service of documents generally. I find the Landlord did not serve the Tenant with his evidence as is required of him. I decline to consider his evidence in my analysis for this decision.

Issues to be Decided

1. Is the Tenant entitled to an Order for compensation from the Landlord related to a Notice to End Tenancy for Landlord's Use of Property?
2. Is the Tenant entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this periodic tenancy began on September 1, 2019. The current Landlord purchased the residential property in October 2021. Monthly rent is \$950.00 payable on the first day of each month. A security deposit of \$475.00 was collected at the start of the tenancy and was returned to the Tenant at the end of the tenancy.

The Tenant testified that in December 2021, the Landlord said he would be raising her rent to \$1,200.00 in the beginning of the new year. The Tenant sent RTB information about the maximum allowable increase in rents to the Landlord.

On February 27, 2022, the Tenant spoke with a real estate person who assisted the Landlord in finding the property. The Tenant said that she was told over speakerphone that she was going to be "*renovicted*." After discussing with the Landlord how they wanted the rental unit cleaned up, the Tenant and Landlord signed a Mutual Agreement to End a Tenancy form #RTB-8. The tenancy ended at 5:00 p.m. on April 1, 2022.

The Landlord did not issue a Section 49 notice to end tenancy to the Tenant. However, the Landlord compensated the Tenant one month's rent. The Landlord did minor renovations and re-rented the rental unit for \$1,600.00 per month to new tenants.

The Tenant's witness confirmed that the Tenant spoke with the real estate person who assisted the Landlord in finding the property, and he said the real estate person told the Tenant the Landlord was trying to renovict her. The Tenant was able to find a new place to live with the help of work connections. She had no intentions of moving and had to make some concessions in her life to secure the new place.

The Tenant is seeking 12 month's rent compensation as the Tenant stated the Landlord did not accomplish the stated purpose for ending the tenancy.

Analysis

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.

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.* (emphasis mine)

The Landlord did not serve a Section 49 notice to end tenancy on the Tenant. There may have been conversations about renovations, but ultimately this tenancy ended pursuant to Section 44(1)(c) of the Act, "the landlord and tenant agree in writing to end the tenancy". Form #RTB-8 starts by saying,

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.

I find this tenancy did not end pursuant to Section 49 of the Act. 12 month's rent compensation is only available if the Landlord served a Section 49 notice to end, then did not accomplish the stated purpose in the reasons of that notice. Accordingly, I dismiss the Tenant's application without leave to re-apply.

As the Tenant was not successful in her claim, I do not grant her recovery of the application filing fee.

Conclusion

The Tenant's application is dismissed 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 Act.

Dated: December 15, 2022

Residential Tenancy Branch