



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, FFT

Introduction

On June 9, 2022, the Tenants applied for dispute resolution under the *Residential Tenancy Act* (“the Act”) seeking compensation for money owed or damage or loss under the Act, Regulation, or tenancy agreement.

The matter was scheduled as a teleconference hearing. The Tenants and the Landlord were present at the hearing. At the start of the hearing, I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

- Are the Tenants entitled to money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement.?

Background and Evidence

The Tenants and Landlord testified that a Two Month Notice to End Tenancy for Landlord’s Use of Property was never served to the Tenants.

The Tenants testified that the Landlord told them that his son would be taking over the residence and they would need to vacate.

The Tenants and Landlord testified that they signed a mutual agreement to end tenancy effective May 1, 2022.

The Tenants and the Landlord testified that the Tenants moved out of the rental unit on April 1, 2022.

The Tenants testified that the Landlord's son did not move into the rental unit and the Landlord immediately re-rented the unit to new tenants. The Tenants provided a copy of an advertisement showing the rental unit available for rent.

The Tenants are seeking compensation of 12 months rent payable under their tenancy agreement because the Landlord did not achieve the purpose for ending their tenancy.

In reply, the Landlord confirmed that he re-rented the unit to new tenants as of June 15, 2022.

The Landlord stated that the Tenants were moving out because they had purchased a manufactured home up island.

Analysis

Section 44 of the Act provides that A tenancy ends only if one or more of the following applies:

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

- (i) section 45 *[tenant's notice]*;
- (i.1) section 45.1 *[tenant's notice: family violence or long-term care]*;
- (ii) section 46 *[landlord's notice: non-payment of rent]*;
- (iii) section 47 *[landlord's notice: cause]*;
- (iv) section 48 *[landlord's notice: end of employment]*;
- (v) section 49 *[landlord's notice: landlord's use of property]*;
- (vi) section 49.1 *[landlord's notice: tenant ceases to qualify]*;
- (vii) section 50 *[tenant may end tenancy early]*;

(b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates or abandons the rental unit;

- (e) the tenancy agreement is frustrated;
- (f) the director orders that the tenancy is ended;
- (g) the tenancy agreement is a sublease agreement.

Section 51(1) of the Act provides that 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.

51(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.*

Based on all the above, the evidence and testimony of the Tenants and Landlord, and on a balance of probabilities, I find as follows:

I find that the tenancy did not end based on service of a notice to end tenancy. The Tenants and Landlord entered into a mutual agreement to end the tenancy. I find that the parties agreed in writing to end the tenancy on May 1, 2022. The tenancy ended in accordance with section 44(c) of the Act.

Further to my finding that a notice to end tenancy was never served to the Tenants, the Mutual Agreement to End Tenancy signed by the parties provides the following:

*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 Park Tenancy Act, contact the Residential Tenancy Branch using the information provided at the bottom of this form before you sign.*

[My emphasis]

The Tenants were under no legal obligation to agree to end the tenancy; they could have remained as Tenants until the Landlord had sufficient reason or cause to end the tenancy by issuing them a proper notice to end tenancy. The Tenants agreed to end the tenancy by signing the mutual agreement.

Compensation under section 51 of the Act stems from service of a Two Month Notice to End Tenancy for Landlord's Use of Property to a Tenant. Since I have found that the tenancy did not end based on service of a notice to end tenancy, I find that the Landlord had no restrictions on what he could do with the rental unit after the Tenants moved out and the Landlord is not required to pay any compensation to the Tenants for how the tenancy ended, or for how the rental unit was used afterwards.

The Tenants' request for compensation of \$21,000.00 is dismissed without leave to reapply.

Filing fee

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenants were not successful with their application, I decline to order the Landlord to repay the \$100.00 fee that the Tenants paid to make application for dispute resolution.

Conclusion

I find that the tenancy ended on April 1, 2022, in accordance with section 44(c) after the parties agreed in writing to end the tenancy and the Tenants vacated the unit.

I find that the tenancy did not end based on service of a notice to end tenancy, I find that the Landlord is not required to pay any compensation to the Tenants for how the tenancy ended, or for how the unit was used after they vacated.

The Tenants' request for compensation of \$21,000.00 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: February 23, 2023