



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing dealt with the tenants' application, filed on July 5, 2022, pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order of \$18,000.00 for 12 months' rent compensation because the landlord ended the tenancy and has not complied with the *Act* or used the rental unit for the stated purpose, pursuant to section 51.1; and
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 72.

"Tenant JH" did not attend this hearing. The landlord, the landlord's lawyer, tenant HT ("tenant"), and the tenants' two advocates, advocate KC ("tenants' advocate") and "advocate DG," attended this hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

This hearing lasted approximately 16 minutes from 1:30 p.m. to 1:46 p.m.

All hearing participants confirmed their names and spelling. The landlord and the tenant provided their email addresses for me to send this decision to both parties after the hearing.

The landlord confirmed that her lawyer had permission to represent her at this hearing. She identified her lawyer as the primary speaker for the landlord.

The tenant confirmed that she had permission to represent tenant JH at this hearing (collectively "tenants"). She said that both advocates had permission to represent both tenants at this hearing. She identified the tenants' advocate as the primary speaker for the tenants.

The tenants' advocate stated that advocate DG was in training, she would observe only, and she would not participate in this hearing. Neither party objected to same during this hearing.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("*Rules*") does not permit recordings of any RTB hearings by any participants. At the outset of this hearing, all hearing participants separately affirmed that they would not record this hearing.

I explained the hearing process to both parties. They had an opportunity to ask questions. Neither party made any adjournment or accommodation requests.

The landlord's lawyer confirmed receipt of the tenants' application for dispute resolution and notice of hearing. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenants' application and notice of hearing.

The landlord's lawyer confirmed that the landlord did not receive any evidence from the tenants. The tenants' advocate said that the tenants' evidence was served to the landlord late, and the tenants did not intend to rely upon it at this hearing. The tenants' advocate confirmed that the tenants' evidence was two photographs of rental and sale listings.

The tenants' advocate said that the tenants did not receive the landlord's evidence. The landlord's lawyer said that she could not serve the tenants and wanted to reapply for substituted service because her two previous applications were dismissed with leave to reapply.

I informed both parties that I would not make any findings regarding service of the tenants' evidence or the landlord's evidence to the other party. I did not make a decision on the merits of this application, so I do not find it necessary to make the above service findings.

Preliminary Issue – Fixed Term Tenancy

At the outset of this hearing, the tenant confirmed that the tenants filed this application on July 5, 2023. The tenant and the tenants' advocate confirmed that the tenants filed this application for 12 months' rent compensation of \$18,000.00, based on a fixed term

tenancy end date that required the tenants to vacate, pursuant to the parties' written tenancy agreement.

Both parties agreed that the tenants vacated the rental unit on June 15, 2022.

The tenants' advocate stated that only the landlord, not the tenants, initialled the above fixed term provision in the tenancy agreement. The landlord's lawyer stated that the tenants initialled the above provision in the tenancy agreement.

Section 51.1(1) of the *Act* states the following (emphasis in original):

Tenant's compensation: requirement to vacate

51.1 (1) *Subject to subsection (2) of this section, if a fixed term tenancy agreement includes, in a circumstance prescribed under section 97 (2) (a.1), a requirement that the tenant vacate the rental unit at the end of the term, the landlord must pay the tenant an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if*

- (a) steps have not been taken, within a reasonable period after the date the tenancy ended, to satisfy the prescribed circumstance, or*
- (b) the rental unit is not used in a way that satisfies the prescribed circumstance for at least the period of time prescribed under section 97 (2) (a.2), beginning within a reasonable period after the date the tenancy ended.*

Section 104.3 of the *Act* states the following (emphasis in original):

Transition — fixed term tenancy agreements

104.3 (1) *If a fixed term tenancy agreement entered into before this section comes into force requires that a tenant must vacate the rental unit on a specified date, the requirement to vacate the rental unit ceases to have effect as of the date this section comes into force...*

Residential Tenancy Policy Guideline 30 states the following, in part (emphasis in original):

B. VACATE CLAUSES

...

The reason for including a vacate clause must be indicated on the tenancy agreement and both parties must have their initials next to this term for it to be

enforceable. The tenant must move out on the date the tenancy ends. The landlord does not need to give a notice to end tenancy or pay one months' rent as compensation as required when ending a tenancy under section 49.

Residential Tenancy Policy Guideline 50 states the following, in part (emphasis in original):

E. VACATE CLAUSES

Transition

Section 51.1 was brought into force by Regulation on July 11, 2022. In general, a law does not apply to previous circumstances unless required by the legislation...

...Section 51.1 would not apply in circumstances where the fixed term tenancy agreement already ended...

Both parties provided undisputed, affirmed testimony at this hearing, that the tenants vacated the rental unit on June 15, 2022. The tenants' advocate stated that the tenants did not initial the above fixed term provision in the tenancy agreement, as required by Residential Tenancy Policy Guideline 30.

I informed both parties that the tenants were not entitled to 12 months' rent compensation of \$18,000.00, pursuant to section 51.1 of the *Act*, since this fixed term tenancy ended on June 15, 2022, and the above provision came into force on July 11, 2022, as per section 104.3 of the *Act* and Residential Tenancy Policy Guideline 50. I notified both parties that the tenants' application for a monetary order of \$18,000.00, pursuant to section 51.1 of the *Act*, is dismissed without leave to reapply. Both parties affirmed their understanding of same.

Preliminary Issue – 2 and 4 Month Notices

Both parties agreed that the tenants did not receive a Two Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice") or a Four Month Notice to End Tenancy for Demolition or Conversion of a Rental Unit ("4 Month Notice") in the approved RTB forms from the landlord.

Sections 49, 51 and 52 of the *Act*, state in part (my emphasis added):

- 49 (2) Subject to section 51 [tenant's compensation: section 49 notice], a **landlord may end a tenancy**
(a) for a purpose referred to in subsection (3), (4), (5) or (6) **by giving notice to end the tenancy** effective on a date that must be
(i) not earlier than **2 months** after the date the tenant receives the notice,
...
(b) for a purpose referred to in subsection (6) **by giving notice to end the tenancy** effective on a date that must be
(i) not earlier than **4 months** after the date the tenant receives the notice,
...
(7) A notice under this section must comply with section 52 [form and content of notice to end tenancy].
- 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
(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or
(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.
- 52 **In order to be effective, a notice to end a tenancy must be in writing and must**
(e) when given by a landlord, be in the approved form.

Both parties provided undisputed, affirmed testimony at this hearing, that the tenants did not receive a 2 Month Notice or a 4 Month Notice in the approved RTB forms from the landlord.

I informed both parties that the tenants were not entitled to 12 months' rent compensation of \$18,000.00, pursuant to section 51 of the Act, since the tenants did not receive any 2 or 4 Month Notices, in the approved RTB forms, to end their tenancy, from the landlord. I notified both parties that the tenants' application for a monetary

order of \$18,000.00, pursuant to section 51 of the *Act*, is dismissed without leave to reapply. Both parties affirmed their understanding of same.

As the tenants were unsuccessful in this application, I find that they are not entitled to recover the \$100.00 filing fee paid for this application, from the landlord. I informed both parties that this claim was also dismissed without leave to reapply. Both parties affirmed their understanding of same.

Conclusion

The tenants' entire 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 *Residential Tenancy Act*.

Dated: March 27, 2023

Residential Tenancy Branch