



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNECT, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants filed under the *Residential Tenancy Act* (the “*Act*”) for a monetary order for money owed or compensation for damage or loss, and the recovery of their filing fee paid for this application. The matter was set for a conference call.

Both the Tenants and the Landlord attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at 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.

Issues to be Decided

- Are the Tenants entitled to a monetary order for money owed or compensation for damage or loss pursuant to section 51 of the *Act*?
- Are the Tenants entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The Tenants submitted that their tenancy began on August 1, 2019, that rent in the amount of \$2,035.00 was to be paid by the first day of each month, and at the outset of the tenancy, the Tenants had paid a \$1,000.00 security deposit. The Tenants submitted a copy of the tenancy agreement into documentary evidence.

The Tenants testified that they were served with a buyers notice to the seller for vacant possession on January 24, 2022, and that they moved out in accordance with that letter on March 1, 2022. The Tenants submitted a copy of the buyer's request into documentary evidence.

The Tenant testified that they found out the Landlord had re-rented the property as of April 1, 2022.

The Tenants testified when asked, that they did not receive a Two-Month Notice for the Landlord's use of the property form RTB-32.

Analysis

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

In this case, the Tenants are claiming compensation pursuant to section 51 of the *Act*, which states the following:

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.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) paid rent before giving a notice under section 50, the landlord must refund the amount paid.

(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.*

Section 51(1) of the Act states that in order for this section to apply a tenant must be served with an end of tenancy notice under section 49 of the Act. Section 49(7) requires the following:

Landlord's notice: landlord's use of property

(7) A notice under this section must comply with section 52 [form and content of notice to end tenancy] and, in the case of a notice under subsection (5), must contain the name and address of the purchaser who asked the landlord to give the notice.

Section 52 of the Act sets out the requirements for a notice to end tenancy, stating the following:

Form and content of notice to end tenancy

5 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.*

Pursuant to section 52(e) of the *Act* a notice to end tenancy, issued by a Landlord, must be on the approved form. In this case, that approved form is RTB-32: Two Month Notice to End Tenancy For Landlord's Use of Property. I have reviewed the "buyers notice" submitted into evidence by the Tenants and note that this is not the approved end of tenancy notice form RTB-32. I accept the Tenants' testimony that they were not issued form RTB-32 before this tenancy ended.

Consequently, I must dismiss the Tenants application for a monetary order for compensation under section 51 of the *Act*, as this compensation can only be awarded if form RTB-32 has been issued, and after issuing this form the Landlord breaches the stated purpose on that notice.

Finally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenants have not been successful in their application, I find that the Tenants are not entitled to recover the \$100.00 filing fee.

Conclusion

I dismiss the Tenants claim in its entirety.

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 6, 2023

Residential Tenancy Branch