



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, MNETC, 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 monetary loss or other money owed, for a monetary order for compensation pursuant to section 51 of the Act, and the recovery of their filing fee paid for this application. The matter was set for a conference call.

Two Tenants with their Advocate (“the Tenants”) as well as the Landlord, the Landlord’s spouse, and their Legal Counsel (“the Landlord”) attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenants 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.

Preliminary Matters – Exchange of Evidence

At the outset of these proceedings, the exchange of evidence was considered; the Landlord testified that they received the Tenants’ evidence package.

The Tenants testified that they did not receive an evidence package from the Landlord. The Landlord testified that they served their evidence package to the Tenants by Canada Post Registered mail sent on March 2, 2023, to the address provided to them on the Notice of Hearing documentation. The Landlords submitted a Canada Post Registered mail tracking number into documentary evidence.

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 an additional rent increase for capital expenditures application (see Rule 11), 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."

The Tenants testified that they had provided the address listed on the Notice of Hearing documentation but that they were no longer using that address for service. The Tenants confirmed that they had not provided an updated address for service to the Landlord or to the Residential Tenancy Branch.

I accept the Landlord's testimony supported by their documentary evidence, that they did serve their documentary evidence package to the Tenants at the address provided to them for service by the Tenants.

As the Tenants are the applicant to these proceedings, I find that they had an obligation to ensure that the Landlord, as the respondent to their application, had a current address for the serves of documents related to these proceedings. As the Tenants did not update their address for service to the Landlord or to the Residential tenancy branch, I find that the address provided by the Tenants on the Notice of Hearing documentation was the correct address for service to the Tenants.

Consequently, I find that the Landlord's documentary evidence had been served to the Tenants in accordance with the *Act* and that their evidence package was deemed received five days after it was mailed, pursuant to section 90 of the *Act*.

Issues to be Decided

- Are the Tenants entitled to compensation pursuant to section 51 of the *Act*?
- Are the Tenants entitled to a monetary order for compensation for monetary loss or other money owed?
- 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 testified that their tenancy began on December 1, 2021, as a verbal tenancy, for four tenants to reside in a basement unit, and that each tenant under that tenancy paid \$500.00 each in rent for a total rent of \$2,000.00 per month, and that at the outset of the tenancy, the Tenants had paid a \$1,000.00 security deposit to the Landlord.

The Tenants testified that their tenancy started under a previous owner, who, when they sold the property had the Tenants sign a tenancy agreement so the new owner could not increase their rent.

The Landlord submitted that this tenancy began on January 1, 2022, as a written month-to-month tenancy, for four Co-tenants, at a monthly rent of \$2,000.00 per month, and that a \$1,000.00 security deposit had been collected by the Landlord. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

The Tenants testified that they received a text notice on either May 4 or 5, 2022, from the Landlord to end their tenancy as of June 1, 2022. The Tenants testified that the Landlord had initially told them that a family member would be moving in but that they eventually found out that the Landlord had re-rented the property as of June 1, 2022.

The Landlord submitted that they never issued a two-month notice to end tenancy, or any other notice to end the tenancy, verbal or in writing, but instead they had received written notice to end the tenancy from one of the four co-tenants on April 29, 2022. The Landlord submitted that they never issued notice to end this tenancy but that they did require all the co-tenants under the tenancy to vacate the rental unit due to the April 29,

2022, notice provided to them. The Landlord's submitted a witness statement from the co-tenant who had issued the notice into documentary evidence.

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

The Tenants testified that the other co-tenant had not informed them that they were going to end the tenancy and that they have lost contact with the other two co-tenants under their tenancy.

The Tenants testified when asked, that they did attempt to sign a new tenancy agreement with the Landlord in order to keep the rental unit but that they could not agree on a rent amount, so they moved out.

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 for the recovery of losses totalling \$1,171.13 due to their eviction. Awards for compensation due to damage are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

"The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and

- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I accept the submission of the Landlord supported by their witness statement that this tenancy ended due to one of the four co-tenants to this tenancy issuing a written notice to end the tenancy pursuant to section 45 of the *Act*. The Residential Tenancy Policy Guideline # 13. Rights and Responsibilities of Co-tenants states the following:

“E. ENDING A TENANCY

A tenant can end a tenancy by giving the landlord a written notice. A tenancy may also end if the landlord and any tenant or co-tenant mutually agree in writing to end the tenancy. When a tenancy ends in these circumstances, the notice or agreement to end the tenancy applies to all co-tenants.

In a monthly or periodic tenancy, when a tenant serves the landlord with a written notice to end tenancy, the effective date of the notice must be at least one month after the landlord receives the notice and on the day before rent is due. If the tenant gives proper notice to end the tenancy, the tenancy agreement will end on the effective date of that notice and all tenants must move out, even where the notice has not been signed by all tenants. When a tenant has ended the tenancy by giving written notice, all co-tenants remain responsible for meeting the terms of the tenancy agreement until the effective date of the notice.

Co-tenants wishing to remain in the rental unit after a notice to end the tenancy has been given should discuss the situation with the landlord. If the landlord agrees to the tenant staying, the landlord and tenant must enter into a new written tenancy agreement.”

As it was one of the four co-tenants to this tenancy that ended this tenancy, I find that the Landlord did not breach the *Act* when they required all Tenants under that tenancy agreement to vacate the rental unit at the end of the notice period. Therefore, as the Tenants have failed to prove a breach of the *Act* by the Landlord, I find that I must dismiss their claim for compensation for losses under the *Act*.

Additionally, the Tenants have also claimed for 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

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.***

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 testimony of the parties and I accept the agreed-upon testimony that the Tenants were never 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 21, 2023

Residential Tenancy Branch