



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held on March 16, 2023. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 51

The Landlord and the Tenant both attended the hearing and provided affirmed testimony. Both parties confirmed receipt of each other's evidence, and no issues were raised with respect to service of the documents.

All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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

- Is the Tenant entitled to compensation for money owed or damage or loss under section 51 of the Act?

Background and Evidence

Both parties agree that monthly rent was \$1,268.00 per month. The Tenant generally referred to the fact that he received the 2 Month Notice to End Tenancy for Landlord's Use of the Property (the Notice) sometime in 2021. However, a copy of that Notice was not provided into evidence, and it is not clear which, if any, grounds were selected on the Notice.

The Landlord provided a copy of a mutual agreement to end tenancy, showing that the parties came to a mutually agreeable date and time to end the tenancy in September 2021.

The Tenant pointed out that the initial Notice he was given was incomplete, and did not have any grounds selected. After some discussions with the Landlord, the parties came to a mutual agreement to end the tenancy.

The Tenant stated he is seeking the compensation (12 months rent) because when he went back to the rental unit after he moved out, he noted that the Landlord was not living in the basement suite, which he used to occupy.

The Landlord stated she is living down there and is using the space as an extension of her living space upstairs.

Analysis

With respect to the Tenant's request to obtain 12 months' worth of rent as compensation based on the 2 Month Notice, pursuant to section 51 of the Act, I note the following portion of the Policy Guideline #50 – Compensation for Ending a Tenancy:

ADDITIONAL COMPENSATION FOR ENDING TENANCY FOR LANDLORD'S USE OR FOR RENVOATIONS AND REPAIRS

A tenant may apply for an order for compensation under section 51(2) of the RTA if a landlord who ended their tenancy under section 49 of the RTA has not:

- accomplished the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy, or*

- *used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice (except for demolition).*

A tenant may apply for an order for compensation under section 51.4(4) of the RTA if the landlord obtained an order to end the tenancy for renovations and repairs under section 49.2 of the RTA, and the landlord did not:

- *accomplish the renovations and repairs within a reasonable period after the effective date of the order ending the tenancy.*

The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under sections 49 or 49.2 of the RTA or that they used the rental unit for its stated purpose under sections 49(6)(c) to (f). If this is not established, the amount of compensation is 12 times the monthly rent that the tenant was required to pay before the tenancy ended.

Under sections 51(3) and 51.4(5) of the RTA, a landlord may only be excused from these requirements in extenuating circumstances.

As noted above, the onus is on the Landlord to demonstrate that they accomplished the stated purpose for ending the tenancy, as laid out on the 2 Month Notice. However, in order to be eligible to receive 12 month's compensation pursuant to section 51(2), a valid Notice must be issued, pursuant to section 49 of the Act. As the applicant on this matter, the onus is on the Tenant to demonstrate that he received a valid Notice in the first place. The onus does not shift to the Landlord to demonstrate that they fulfilled the grounds on the Notice, until the Tenant can demonstrate, he was issued a valid Notice.

Section 52 of the *Act* requires that any notice to end tenancy issued by a Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

In this case, the Tenant has failed to provide any of this documentation into evidence, and the Landlord only submitted a mutual agreement to end tenancy.

I find there is insufficient evidence showing that a valid 2 Month Notice was issued, as the Tenant failed to provide this important document. Since this is the basis for his application, I hereby dismiss his application, in full, with leave to reapply.

Conclusion

The Tenant's application is dismissed, in full, with leave.

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 17, 2023

Residential Tenancy Branch