



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Per section 95(3) of the *Act*, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

Both parties confirmed their email addresses for service of this Decision.

Preliminary Issue- Service

Both parties agree that the tenants served the landlords with their application for dispute resolution in person on March 23, 2023. I find that the landlords were served with the tenants' application for dispute resolution in accordance with section 89 of the *act*.

The tenants testified that they served the landlord with their evidence via registered mail on March 30th of 2023. The landlords testified that they received the tenants' evidence on March 31st 2023 and had an opportunity to review and respond to that evidence.

Rule 3.14 of the Residential Tenancy Branch Rules of Procedure (the "*Rules*") states that evidence must be received by the respondent and the Residential Tenancy Branch directly not less than 14 days before the hearing.

I find that the tenants' evidence package was served on the landlords 12 clear days before this hearing contrary to Rule 3.14. While the tenants' evidence package was late, I find that the landlords are not prejudiced by the late service of evidence because they testified they had an opportunity to review and respond to that evidence. I find that the tenants' evidence was served in accordance with section 88 of the *Act*. I accept the tenants' evidence for consideration in this dispute.

The landlords testified that they served the tenants with their evidence via express post on April 4th of 2023. The tenants testified they received the landlords' evidence on April 7, 2023 and had an opportunity to review that evidence but did not have an opportunity to respond to that evidence.

Section 3.15 of *Rules* states that the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

I find that the tenants were served with the landlords' evidence 5 clear days before this hearing contrary to rule 3.15 of the *Rules*. While I find that the landlords' evidence was served late, I find that the tenants were not prejudiced by the late service because the tenants testified they had an opportunity to review that evidence. I note that had the evidence been served on time at 7 clear days before the hearing the tenants would still not have had an opportunity to respond as rule 3.14 of the *Rules* required the tenants to serve the landlords 14 clear days before the hearing. I find that the late service of two days did not impact the tenants' ability to prepare and participate in this hearing. I find that the landlords' evidence was sufficiently served on the tenants for the purposes of this *Act* pursuant to section 71(2) of the act and is accepted for consideration in this hearing.

Preliminary Issue- Amendment

The tenants' application for dispute resolution is for a monetary order for damage or compensation under the act pursuant to section 67 of the *Act*. The tenants' application seeks 12 months rent totaling \$14,400.00. The tenants testified that they are seeking 12 months rent because they believe the landlord did not follow the rules and regulations regarding the notice to end tenancy they received for landlords use of property. The tenants testified that their online reading led them to believe that they might be eligible for 12 months rent compensation.

Based on the above testimony, I find that the tenants are seeking 12 months compensation pursuant to section 51 of the *Act* rather than a monetary order for damage or compensation under the act pursuant to section 67 of the *Act*. During the hearing the landlords referenced the contents of section 51 of the act when responding to the tenants' claims.

Pursuant to section 64 of the act I amend the tenants' application for dispute resolution to state that the tenants are seeking a monetary order for compensation from the landlord related to a notice to end tenancy for landlords' use of property pursuant section 51 of the *Act*. I remove the tenants' claim for compensation under section 67 of the act. I find on a balance of probabilities that the landlords knew that the tenants were actually seeking compensation under section 51 of the act rather than section 67 of the act because they referenced requirements for compensation under section 51 of the *Act* when making submissions during the hearing. Pursuant to the above, I find that the landlords are not prejudiced by the above amendments.

Issues to be Decided

1. Are the tenants entitled to a Monetary Order for compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51 of the *Act*?
2. Are the tenants entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlords' claims and my findings are set out below.

Both parties agreed to the following facts:

- this tenancy began on March 1, 2021 and ended in September of 2022,
- monthly rent in the amount of \$1,200.00 was payable on the last day of each month,
- on August 28, 2022 landlord L.P. served the tenants with a type written notice to end tenancy that was signed by the landlord, and
- the notice to end tenancy was not on a Residential Tenancy Branch Form.

The notice to end tenancy was entered into evidence and states:

I am writing this letter to give you notice to vacate my property rented to you at [the subject rental property] within 61 days (September 1 - October 31, 2022). We will use the property for family use.

Hope you will give this matter preferential attention and take the appropriate action.

The tenants testified that they saw the subject rental property advertised for rent in January of 2023. The tenants testified that they also saw that the landlord renovated the subject rental property and changed it from a two-bedroom to a three-bedroom unit. The tenants testified that they believe the landlords were not being honest with them about why they were being evicted and just wanted to get more money for rent.

The landlords testified that when they served the tenants with the notice to end tenancy they were not aware of the six month occupation requirement. The landlords testified that they used the subject rental property for additional living space for some months but needed money and so advertised the unit for rent and got it ready for a home share.

Section 49(5) of the *Act* states:

(5)A landlord may end a tenancy in respect of a rental unit if

(a)the landlord enters into an agreement in good faith to sell the rental unit,

(b)all the conditions on which the sale depends have been satisfied, and

(c)the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:

(i)the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;

(ii)the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

Section 51 of the *Act* states:

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) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(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.

(3)The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from

- (a)accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or
- (b)using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Section 52 of the *Act* states:

- 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.

The triggering event for the possibility of compensation under section 51 of the *Act* is the service on the tenant of a completed Residential Tenancy Branch notice to end tenancy form. To be valid and trigger section 51 compensation, the notice to end tenancy must conform to the form and content requirements of section 52 of the *Act*. In this case, the required form served pursuant to section 49 of the *Act* would have been RTB Form #32.

A notice to end tenancy that is not on a Residential Tenancy Branch form does not conform to the form requirements under section 52(e) of the *Act* and is not an enforceable or a valid way of ending a tenancy. Because a section 49 notice to end tenancy on a Residential Tenancy Branch form was not served on the tenants, the

tenants are not entitled to section 51 compensation. The tenants' application is therefore dismissed without leave to reapply.

The tenants were under no obligation to move out of the subject rental property pursuant to the August 28, 2022 notice to end tenancy and are not eligible to claim compensation under section 51 of the act.

As the tenants were not successful in this application for dispute resolution I find they are not entitled to recover the \$100 filing fee pursuant to section 72 of the *Act*.

Conclusion

The tenants' 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: April 13, 2023

Residential Tenancy Branch