



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding PENINSULA PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNECT FFT

Introduction

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

- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

TV appeared as agent for the landlord in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. Both parties confirmed that they understood.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing. In accordance with section 89 of the *Act*, I find that the landlord duly served with the tenant's application. As all parties confirmed receipt of each other's evidentiary materials, I find that these documents were duly served in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for the landlord's failure to use the rental unit for the purpose stated in the notice to end tenancy (i.e., landlord's use of property)?

Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed-term tenancy began on July 1, 2019 and was to end on June 30, 2022. Monthly rent was set at \$2,350.00, payable on the first of the month.

The tenant testified that they had moved out on April 30, 2022, after being informed by the landlord that they wanted to sell the home. The tenant testified that they had discovered that the landlord had re-rented the rental unit instead for \$400.00 more per month to a new tenant. The tenant is seeking compensation as they feel that the landlord had misled the tenant into moving out, causing the tenant considerable hardship. The tenant submitted a copy of the document that was presented to the tenant, and signed by both parties. The document was accompanied by an email from the owners sent on February 1, 2022 requesting that the tenant vacate the premises by April 30, 2022 or sooner, before the end of the fixed term. The tenant confirmed in the hearing that no other notices to end tenancy were served on the tenant.

The landlord is disputing the tenant's claim for compensation as this tenancy ended pursuant to a Mutual Agreement to End Tenancy signed by both parties, and not on the basis of a 2 Month Notice to End Tenancy for Landlord's Use. The landlord testified that as part of the Mutual Agreement, the tenant was compensated the equivalent of two month's rent.

Analysis

Section 44 of the *Act* states how a tenancy may be ended:

How a tenancy ends

- 44** (1) A tenancy ends only if one or more of the following applies:
- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:
 - (i) section 45 [*tenant's notice*];
 - (i.1) section 45.1 [*tenant's notice: family violence or long-term care*];
 - (ii) section 46 [*landlord's notice: non-payment of rent*];

- (iii) section 47 [*landlord's notice: cause*];
- (iv) section 48 [*landlord's notice: end of employment*];
- (v) section 49 [*landlord's notice: landlord's use of property*];
- (vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];
- (vii) section 50 [*tenant may end tenancy early*];

(b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended;

(g) the tenancy agreement is a sublease agreement.

(2) [Repealed 2003-81-37.]

(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

Section 49 of the *Act* allows for the landlord to issue a Notice to end the tenancy for landlord's use, and states the following:

7) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*].

(8) A tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice.

(9) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

Section 52 of the *Act* requires that the above Notice complies with the *Act*, specifically, that the Notice 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) state the grounds for ending the tenancy, and (e) be in the approved form.

Although the landlord had communicated to the tenant that they wanted to end the tenancy in order to sell the home, the tenant was never served with a 2 Month Notice to End Tenancy for Landlord's Use. The form signed the tenant is a Mutual Agreement to End a Tenancy, which does not require the landlord to provide compensation to the tenant. The tenant applied for compensation pursuant to section 51 of the *Act* for the failure of the landlord to fulfill their obligations pursuant to a Notice to End Tenancy, which requires that a notice be given under section 49 of the *Act*.

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...

(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

I find that the tenant moved out as requested by the landlord, and pursuant to a Mutual Agreement to End Tenancy, and not as a result of receiving a 2 Month Notice pursuant to section 49 of the *Act*. An application for compensation pursuant to section 51 of the *Act* requires that the tenant be served with a Notice to End Tenancy in accordance with section 49 of the *Act*. As this tenancy ended pursuant to a Mutual Agreement, and not on the basis of a 2 Month Notice to End Tenancy, the tenant is not entitled to a claim pursuant to section 51 of the *Act*. Accordingly, the tenant's application for compensation is dismissed without leave to reapply.

As the filing fee is normally rewarded to the successful party after a hearing, I dismiss the tenant's application to recover the filing fee without leave to reapply.

Conclusion

The tenant's 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: May 18, 2023

Residential Tenancy Branch