



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNETC, FFT**

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution (the "Application") under the *Residential Tenancy Act* (the "Act"), made on August 22, 2023. The Tenants applied for a monetary order for compensation relating to a Two Month Notice to End Tenancy for Landlord's Use, and for the return of the filing fee.

At the start of the hearing, the Landlord raised a procedural issue relating to the Tenants' Application. The parties agreed that the named respondent on the Tenant Application is the Landlord (seller) of the rental unit. The parties agreed that the Landlord (seller) was instructed by the purchaser to serve the Tenants with the Two Month Notice as the purchaser, or their close family member intended to occupy the rental unit. The parties agreed that the rental unit sold to the purchaser, the Tenants complied with the Two Month Notice and vacated the rental unit.

The Tenants have submitted their Application for compensation as they feel as though the purchaser has not accomplished the stated purpose of the Two Month Notice. However, the Tenants have only named the Landlord (seller) in their Application as the respondent, not the purchaser.

Preliminary Matters

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.

(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 applicable, from

(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, and

(b) using the rental unit, except in respect of the purpose specified in section 49 (6) (a), for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

According to the Residential Tenancy Branch Policy Guideline 43;

It is up to the applicant to ensure that a party is properly named so that any order granted is enforceable. The director may be unaware that a party is not properly named and may issue the order using the name set out in the application. Where an individual is not properly named, the director may dismiss the Application for Dispute Resolution with leave to reapply unless the other party is present. In that circumstance, the director may amend the Application for Dispute Resolution.

In this case, I accept that the parties agreed that the Landlord (seller) served the Tenants with the Two Month Notice as the purchaser intends to occupy the rental unit. I find that the Tenants have not named the purchaser as a respondent in the Application. I find that it would have been the purchaser's responsibility to accomplish the stated purpose of the Two Month Notice after instructing the Landlord (seller) to serve the Two

Month Notice. As such I dismiss the Tenants' claim for compensation under Section 51 of the Act WITH leave to reapply.

As the Tenants were unsuccessful with their Application, I find that they are not entitled to the return of the filing fee. The Tenants are at liberty to submit a new Application and must ensure they name to proper Respondent(s).

Conclusion

The Tenant's monetary claim for compensation is dismissed with leave to reapply as the Tenants have not named to proper respondent relating to the monetary claim under Section 51 of the Act. The Tenants are at liberty to reapply for such compensation.

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 16, 2023

Residential Tenancy Branch