



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **MNETC, FFT**

Introduction

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

1. An Order for compensation from the Landlord related to a Notice to End Tenancy for Landlord's Use of Property under Sections 51 and 62 of the Act; and,
2. Recovery of the application filing fee under Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's agents and the Tenants attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

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

Both parties acknowledged receipt of:

- the Tenants' Notice of Dispute Resolution Proceeding package and evidence personally served on August 19, 2022, the Landlord confirmed receipt, served on August 19, 2022; and,
- the Landlord's evidence served by email on March 28, 2023, the Tenants confirmed receipt, deemed served on March 31, 2023.

Pursuant to Sections 88, 89 and 90 of the Act, and Sections 43 and 44 of the *Residential Tenancy Regulation*, I find that both parties were duly served with all the documents related to the hearing in accordance with the Act.

Issues to be Decided

1. Are the Tenants entitled to an Order for compensation from the Landlord related to a Notice to End Tenancy for Landlord's Use of Property?
2. Are the Tenants entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy on April 1, 2021 and they signed a mutual agreement to end the tenancy on January 31, 2022. The fixed term ended on January 31, 2022, then the parties entered another fixed term tenancy ending on July 31, 2022. Monthly rent was \$3,050.00 payable on the first day of each month. A security deposit of \$1,525.00 was collected at the start of the tenancy. The Landlord kept \$200.00 for the strata move-out fees and returned \$1,325.00 to the Tenants.

On January 20, 2022, the Tenants signed the second mutual agreement to end a tenancy on July 31, 2022. This agreement states at the top:

NOTE: This form is NOT a Notice to End Tenancy. Neither a Landlord nor a Tenant is under any obligation to sign this form. By signing this form, both parties understand and agree the tenancy will end with no further obligation between landlord(s) or tenant(s). If you are the tenant, this may include foregoing any compensation you may be due if you were served a Notice to End Tenancy. If you have questions about tenant or landlord rights and responsibilities under the Residential Tenancy Act or the Manufactured Home Part Tenancy Act, contact the Residential Tenancy Branch using the information provided at the bottom of this form before you sign.

This is a Mutual Agreement between the Landlord and Tenant

On July 11, 2022, the Tenants received an email from the property management company saying:

It is noticed that you are going to move out on 31, July, 2022

Please follow the checklist prior your move out inspection with our agent.

I have also included agent into this email, [name].

Move-out Checklist

The rental unit must be cleaned thoroughly upon move-out. Please see checklist below.

ALL to be completed by 12pm on the last day of the month.

The Tenants did not receive a notice under Section 49 of the Act to end the tenancy. The Tenants vacated the rental unit on July 31, 2022.

The Tenants are seeking three months rent compensation, \$1,000.00 for an increase of rent for their move, rental move-in and move-out fees covered, and compensation for time the Tenants had to take off work.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

On January 20, 2022, the Tenants signed a Mutual Agreement to End a Tenancy on July 31, 2022. On this second mutual agreement to end, the Landlord did not extend the tenancy as this is what happened after the first fixed term ended. The mutual agreement to end is not a notice to end the tenancy from the Landlord, and there is no obligation for the Landlord to compensate the Tenants on the end date set by the mutual agreement to end. I deny granting compensation to the Tenants as the tenancy did not end because of a Section 49 notice to end tenancy.

The mutual agreement to end states at the top, highlighted in yellow, that neither the landlord nor the tenant is under any obligation to sign the form. I find the Tenants were misled or misinformed when signing this mutual agreement to end, but there is no compensation that will flow to them from their entering that contract.

The Tenants' application is dismissed. As the Tenants were not successful in their claim, I do not grant them recovery of the application filing fee.

Conclusion

The Tenants' application is dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: May 26, 2023

Residential Tenancy Branch