



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC, FFT

Introduction

On September 24, 2022, the Tenants applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 51 of the *Residential Tenancy Act* (the “Act”) and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

Tenant K.E. attended the hearing. D.K. attended the hearing as counsel for Respondents V.K. and P.N., and K.P. (the “Landlord”) attended the hearing as well.

At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, to please make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also advised that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance, with the exception of D.K., provided a solemn affirmation.

The Tenant advised that she served a separate Notice of Hearing and evidence package to each named Respondent by registered mail on October 8, 2022. However, D.K. advised that neither V.K. nor P.N. received these packages. The Tenant was asked where she sent these packages, and she indicated that she mailed them to the dispute address. Given that it was not clear why these packages were served to those Respondents at that address, I am satisfied that Respondents V.K. and P.N. were not adequately served the Tenants’ Notice of Hearing and evidence packages. Regardless,

the hearing proceeded until it was determined the reason for these two persons being named.

The Landlord confirmed that he received this Notice of Hearing and evidence package in mid-October 2022. Based on this undisputed testimony, as this package was served in accordance with Section 89 of the *Act*, I am satisfied that the Landlord has been duly served the Notice of Hearing and evidence package. As such, this evidence was accepted and considered when rendering this Decision.

D.K. advised that he served evidence to the Tenants by registered mail, but he was not sure when this was done. The Tenant confirmed that they received this evidence a few days after May 5, 2023. As this evidence was served in accordance with the timeframe requirements of Rule 3.15 of the Rules of Procedure, this evidence was accepted and considered when rendering this Decision.

The Landlord acknowledged that he did not submit any evidence for consideration on this file.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to a Monetary Order for 12 months' compensation based on the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice")?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Tenant advised that the tenancy started on November 1, 2020, and that the tenancy ended when the Tenants gave up vacant possession of the rental unit on May 1, 2022. Rent was established at \$1,667.00 per month and was due on the first day of each month. A security deposit of \$800.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

After being asked multiple times to confirm if they were ever served with the Notice by the seller of the rental unit, the Tenant acknowledged that they never received this Notice. She testified that the only document they ever received was the *Tenant Occupied Property – Buyers [sic] Notice to Seller for Vacant Possession* form where it indicated that the Landlord requested that the seller serve the Notice. Neither D.K., V.K., nor the Landlord were aware of the Notice ever being served to the Tenants.

Moreover, after hearing testimony from the parties, it was apparent that V.K. and P.N. were involved in this matter as the Landlord had subsequently assigned the property to them. As V.K. and P.N. were the assignees, they clearly have no role in this dispute. As such, the Style of Cause on the first page of this Decision has been amended accordingly to remove them as parties.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 44 of the *Act* below outlines all the manners with which a tenancy can end, and if it is due to the Landlord ending the tenancy, the Landlord must use one of the approved forms.

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.

Moreover, Section 52 of the *Act* requires that any notice to end tenancy issued by the 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.

When reviewing the solemnly affirmed testimony before me, it is evident that the seller never served the Tenants with the Notice. As such, there was no requirement for the Tenants to give up vacant possession of the rental unit. Furthermore, as this Notice was never served, the compensation requirements of Section 51 of the *Act* cannot be considered. Consequently, the Tenants' Application is dismissed in its entirety.

As the Tenants were not successful in their claim, I find that the Tenants are not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

I dismiss the Tenants' Application for Dispute Resolution 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 26, 2023

Residential Tenancy Branch