



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 Tenant's Application for Dispute Resolution, made on November 24, 2022 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation;
- an order granting the return of the filing fee.

The Tenant and the Purchaser's Counsel attended the original hearing at the appointed date and time. At the start of the original hearing, the Purchaser confirmed having received the Notice of Hearing and the Tenant's documentary evidence package, however, they stated that they only received the package on April 13, 2023.

The Tenant stated that he had attempted to serve the Purchaser with the above-mentioned documents in person on December 3, 2022, however, the Purchaser refused to accept it. The Tenant provided a video of the attempted service. After reviewing the video provided by the Tenant, I find that it is clear that the Purchaser refused service of these documents. I find that these documents are deemed to have been served by the Tenant to the Purchaser on December 3, 2022, pursuant to Section 89 and 90 of the *Act*.

At the start of the original hearing, it was noted that neither party provided a copy of the Two Month Notice to End Tenancy. The hearing was therefore adjourned to allow the parties to serve further evidence, including a copy of the Two Month Notice to End Tenancy.

The hearing reconvened on July 24, 2023. The Tenant and the Purchaser's Counsel, and the Purchaser's Interpreter attended the reconvened hearing at the appointed date and time.

At the start of the reconvened hearing, I noted that neither party provided a copy of a Two Month Notice to End Tenancy for Landlord's Use of the Property under Section 49 of the *Act*. The Tenant confirmed that he was never served with a Two Month Notice. The Purchaser Counsel stated that they never served a Two Month Notice.

Preliminary Matters

According to Section 51 of the Act;

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.

As the Tenant has not been served with a Notice under Section 49 of the *Act*, I find that they are not entitled to compensation under Section 51 of the *Act*. I therefore dismiss the Tenant's Application in its entirety 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: July 24, 2023

Residential Tenancy Branch