



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC, FFT

Introduction

On November 25, 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 to recover the filing fee pursuant to Section 72 of the Act.

Tenant D.P attended the hearing, with M.M. attending the hearing as counsel for the Tenants. 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, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed 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 M.M., provided a solemn affirmation.

Records indicate that the Tenants’ Notice of Hearing package was provided to them on November 30, 2022, and was required to be served to the Landlord within three days pursuant to Rule 3.1 of the Rules of Procedure (the “Rules”). M.M. advised that this package was served to the Landlord by email on December 7, 2022; however, he confirmed that the Tenants did not have consent to exchange documents by email with the Landlord. As well, M.M. stated that this package was served to the Landlord by registered mail on December 8, 2022. When he was asked why this package was served late, and not in compliance with the Rules, he suggested it was due to timing of being retained; however, D.P. stated that she had been sick.

The Landlord confirmed that he received this package by email on December 7, 2022, and despite not having consent with the Tenants to exchange documents by email, he confirmed that he had accepted service in this manner. However, he raised the concern that this package was served late and not in compliance with the Rules. He was provided with an opportunity to explain how this late service would have prejudiced him, but he could not provide any valid reason how it would be unfair to proceed. As such, I am satisfied that the Landlord has been duly served the Tenants' Notice of Hearing package.

M.M. then advised that the Tenants' evidence was served to the Landlord by email, by being attached to the Landlord's door, and by registered mail, all on July 27, 2023. When he was asked why this evidence was submitted to the Residential Tenancy Branch late, on August 4, 2023, and not in accordance with the timeframe requirements of Rule 3.14, he indicated that it was due to when the Tenants "re-engaged" with him. However, this was clearly not consistent with his earlier statement about serving evidence to the Landlord, on behalf of the Tenants, on July 27, 2023. Regardless, the Landlord confirmed that he received this by email on July 27, 2023. As this documentary evidence has been served in accordance with the timeframe requirements of Rule 3.14, I have accepted this evidence and will consider it when rendering this Decision, despite it being uploaded late to the file.

The Landlord advised that he served the Tenants with his evidence by email on August 4 and 8, 2023. M.M. confirmed that he received the Landlord's documentary evidence, and he stated that he did not have any issue with the Landlord's late evidence. As such, I have accepted all of the Landlord's evidence, and will consider it when rendering this Decision.

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.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

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

Background, Evidence, and Analysis

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.

All parties agreed that the tenancy started on September 1, 2017, and that the tenancy ended when the Tenants gave up vacant possession of the rental unit on July 31, 2022. Rent was established at an amount of \$2,700.00 per month and was due on the first day of each month. A security deposit of \$900.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

All parties also agreed that the Landlord never served the Notice.

M.M. conceded that while the Notice was never served to the Tenants, he advised that Section 1 of the *Act* defines what an approved form is, that Section 5 outlines that the Landlord cannot contract outside of the *Act*, that Section 10 indicates that deviations from an approved form that do not affect its substance and are not intended to mislead should still be considered a valid notice to end tenancy, and that Section 62 permits the Director to make a finding that the Landlord's email to end the tenancy contains all of the hallmarks of the Notice, and should be considered the approved form. As well, while he acknowledged that the Landlord's email does not conform to Section 52 as it is not signed, it is his position that documents sent by email are inherently directed from that person. As the only reason that the Tenants moved was due to this email, it is his position that this was an approved form, and the Tenants are entitled to the compensation pursuant to Section 51 of the *Act*.

D.P. advised that they had an amicable relationship with the Landlord, that they attempted to work with him, and that when they received that email, they "did not know enough" and "could have looked more into" whether the *Act* permitted the Landlord to end the tenancy with an email. She testified that she trusted that this email was legitimate and that she "read the law", mentioning relevant subsections of Section 51 regarding the compensation requirements and the timeframe to dispute a Two Month

Notice to End Tenancy for Landlord's Use of Property. However, she also contradictorily stated that they "did not look into it".

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 1 of the *Act* defines an approved form as "the form approved by the director under section 10 (1) [*director may approve forms*] for the purposes of the section in which it appears."

Section 10 of the *Act* states that "the director may approve forms for the purposes of this Act" and that "Deviations from an approved form that do not affect its substance and are not intended to mislead do not invalidate the form used."

Section 44 of the *Act* outlines all the ways in which a tenancy is permitted to end.

Section 49 of the *Act* states that the tenancy may be ended for Landlord's use of property provided that the notice to end tenancy complies with Section 52 of the *Act*.

Section 51 of the *Act* indicates that a Tenant who receives a notice to end a tenancy under Section 49 is entitled to receive compensation.

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

With respect to the email that D.P. and M.M. consider to be an approved form to end a tenancy that complies with the *Act*, I reject this submission as clearly this email is not signed by the Landlord. Therefore, it does not comply with Section 52 of the *Act*.

Furthermore, Section 1 of the *Act* defines what would be considered an approved form as "the form approved by the director". Clearly, those approved forms are provided to the Landlord on the Residential Tenancy Branch website. While M.M. is attempting to suggest that Section 10(2) of the *Act* permits deviations of a form to be considered as an approved form, I find it important to note that this subsection states specifically that

“Deviations **from** an approved form that do not affect its substance and are not intended to mislead do not invalidate the **form** used.” [emphasis added]

When reading this subsection in plain language, it clearly indicates that deviations while using the approved form do not invalidate that approved form. Given that this email that the Landlord sent did not meet the form and content of Section 52, it clearly could not be considered an approved form in the first place. As such, I wholly reject M.M.’s suggestion that this email would then somehow constitute an approved form that would permit the tenancy to end in accordance with the *Act*. As I am satisfied that the tenancy did not end due to the Landlord serving a Two Month Notice to End Tenancy for Landlord’s Use of Property, I dismiss the Tenants’ claim in its entirety.

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

Conclusion

Based on the above, the Tenants’ 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: August 14, 2023

Residential Tenancy Branch