

DECISION

Introduction

The Tenants filed an Application for Dispute Resolution under the *Residential Tenancy Act* (Act) for:

- a Monetary Order for compensation for the landlord failing to accomplish the stated purpose on a notice to end tenancy pursuant to section 51 or of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

The Tenants filed a further application for Dispute Resolution under the Act for:

- a Monetary Order for the return of all or a portion of their security deposit and/or pet damage deposit pursuant to sections 38 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

Preliminary Matters

At the outset I advised the parties that time may not permit us to hear both matters in the time allotted. We were unable to hear the claim under section 38 of the Act and I therefore severed that matter under section 62 of the Act. The Tenants have leave to reply for that claim.

Service

The Landlord acknowledged service of the Tenants' application for dispute resolution and evidence. Similarly Tenant LT acknowledged service of the Landlords' evidence.

Background and Evidence

The tenancy started September 1, 2021. Rent was \$3,000.00 per month due on the first of the month. The Tenant paid a security deposit of \$1,450.00. The tenancy ended on August 31, 2023.

The Tenant LT testified that they received a text message from the Landlord on June 11, 2023 advising the Tenants that she planned to sell the rental unit and asked the Tenants to vacate the rental unit. The Tenants understood this to be Two Month Notice to End Tenancy. The Tenant further testified that they ended the tenancy based on this notice.

The Tenant submitted that the notice was not in the correct form under the RTB and therefore was not a valid notice. The Tenants are seeking compensation under section 51 of the Act as the notice to end tenancy was not in the correct form. The Tenant further submitted that there is no ability under the Act to end a tenancy to allow the Landlord to sell the property.

Analysis

I will only consider the evidence that is relevant to the Tenant's application for compensation for the Landlord failing to use the property as stated in the Two Month Notice as that is the application before me.

Are the Tenants entitled to a monetary order for compensation for the Landlord failing to accomplish the stated purpose on a notice to end tenancy?

Section 49 of the Act allows a Landlord to end a tenancy if the Landlord intends, in good faith, to occupy the rental unit, or a close family member intends, in good faith, to occupy the rental unit. The Landlord is required under section 49 of the Act to provide the Tenant with a Two Month Notice to End Tenancy for this purpose.

Section 49(7) of the Act requires the Two Month Notice to comply with the form and content rules in section 52 of the Act. The Two Month Notice provided to the Tenant does not meet the requirements under section 52 of the Act as it was given by text, not signed by the Landlord, and did not include the address of the rental unit or the effective date of the notice. The Two Month Notice was also not in the approved form. In order for a Two Month Notice to be valid and effective it must comply with the requirements of section 52 of the Act.

In order to end a tenancy the Landlord must give notice in accordance with the Act. The reason given in the notice was not a valid reason to end a tenancy under the Act as there are specific requirements the Landlord must satisfy under the Act in order to end a tenancy for the sale of a rental unit. The Tenants then have the opportunity to dispute an invalid notice within 15 days of receiving it.

Section 51 compensation is not available to the Tenants if they choose not to dispute an invalid notice and instead end the tenancy. The appropriate course of action was to dispute the Two Month Notice. The Tenants were entitled to dispute the Two Month Notice as it didn't meet the requirements of section 52 of the Act and was given for an invalid purpose. They chose not to do so. I therefore find the Tenants are not entitled to compensation under section 51 of the Act.

Are the Tenants Entitled to Authorization to Recover the Filing Fee for Their Application?

As the Tenants were not successful in their application, they are not entitled to recover the \$100.00 filing fee for their application.

Conclusion

The Tenants' application in respect of compensation under section 51 of the Act is dismissed 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 Act.

Dated: March 6, 2024

Residential Tenancy Branch