



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNETC, FFT**

Introduction

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

- a Monetary Order for compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 1:46 p.m. in order to enable the landlord to call into this teleconference hearing scheduled for 1:30 p.m. Tenant R.R. attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that tenant R.R. and I were the only ones who had called into this teleconference.

Tenant R.R. was advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Tenant R.R. testified that he was not recording this dispute resolution hearing.

Per section 95(3) of the *Act*, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

Tenant R.R. confirmed the tenants' addresses for service of this decision and order.

Tenant R.R. testified that the tenants' application for dispute resolution and evidence were sent to the landlord's address provided on the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") via registered mail on November 6, 2021. Tenant R.R. testified that the package was returned to sender with a notation that the landlord had moved. Tenant R.R. provided the tracking number in the hearing, it is located on the cover page of this decision.

Tenant R.R. testified that the tenants' application for dispute resolution and evidence were then served on the landlord at the address of the subject rental property via registered mail on December 30, 2021. The Notice states that the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. Tenant R.R. testified that the package was returned with a note that states:

Out of country at the moment hold family member will pick it up

Hold till Feb 15/22

The tenants entered into evidence a photograph of the above returned package and note.

I find that the tenants were entitled to serve the landlord at the subject rental property because the Notice states that the Landlord or close family member of the landlord intends on moving into the subject rental property and registered mail sent to the other address provided by the landlord on the Notice was returned to sender. I find that the landlord was deemed served with the tenants' application for dispute resolution and evidence on January 4, 2022, five days after their mailing.

Rule 3.1 of the Residential Tenancy Branch Rules of Procedure states that the applicants must serve their application for dispute resolution on the respondent, within three days of the dispute materials being made available by the Residential Tenancy Branch.

The dispute materials were made available to the tenants on November 3, 2021. I find that while the landlord was served more than three days after the dispute materials were made available to the tenants, contrary to Rule 3.1 of the *Act*, the landlord is not prejudiced by the late service because the landlord still had nearly five months to review and respond to the materials served by the tenants. The tenants' application will therefore continue on its merits.

Issues to be Decided

1. Are the tenants entitled to a Monetary Order for compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51 of the *Act*?
2. Are the tenants entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of tenant R.R., not all details of tenant R.R.'s submissions and arguments are reproduced here. The relevant and important aspects of tenant R.R.'s claims and my findings are set out below.

Tenant R.R. provided the following undisputed testimony. This tenancy began on March 1, 2017 and ended on May 31, 2021. Monthly rent in the amount of \$2,600.00 was payable on the first day of each month. A written tenancy agreement was signed by both the tenant and the previous landlord ("R.J.F.").

Tenant R.R. testified that R.J.F. could not afford to repair the foundation of the subject rental property so he sold it to the landlord (also known as the purchaser). Tenant R.R. testified that at the direction of the landlord, R.J.F. personally served the tenants with the Notice on March 13, 2021. The Notice has an effective date of May 31, 2021. Tenant R.R. testified that the tenants moved out in accordance with the Notice. The Notice states:

All conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

Tenant R.R. testified that after he was evicted he frequently drove past the subject rental property and saw that the landlord conducted major renovations at the subject rental property and installed a suite in the lower floor. Tenant R.R. testified that the landlord never moved into the subject rental property and that after the renovation was complete, sold the property to another family.

Tenant R.R. testified that his wife, tenant L.R., found the subject rental property advertised for sale in November of 2021. Tenant R.R. entered into evidence a photograph of the listing. Tenant R.R. testified that the listing was posted on November 1, 2021. The photograph of the listing shows the address of the subject rental property and states that an open house will occur on Sat Nov 6, from 2-4.

Tenant R.R. testified that the subject rental property was sold, and a new family moved in. Tenant R.R. testified that his ex-neighbours advised him of same.

Analysis

Based on tenant R.R.'s undisputed testimony, I find that R.J.F. personally served the tenants with the Notice at the request of the landlord, on March 13, 2021. I find that the tenants were served in accordance with section 88 of the *Act*.

Section 51(2) of the *Act* states:

(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.

Residential Tenancy Policy Guideline #2A states:

The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under section 49 of the RTA and that they used the rental unit for its stated purpose for at least 6 months.

As the landlord did not attend this hearing, provide testimony or present evidence, I find that the landlord has not proved, on a balance of probabilities, that they accomplished the purpose for ending the tenancy under section 49 of the RTA and that they used the rental unit for its stated purpose for at least 6 months.

Pursuant to my above findings and section 51(2) of the *Act*, I must order the landlord to pay the tenants the equivalent of 12 times the monthly rent payable under the tenancy agreement, that being $12 * \$2,600.00 = \mathbf{\$31,200.00}$.

As the tenants were successful in this application for dispute resolution, I find that the tenants are entitled to recover from the landlord the \$100.00 filing fee pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the tenants in the amount of \$31,300.00.

The tenants are provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 31, 2022

Residential Tenancy Branch