



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, MNDCT, MNSD, FFT

Introduction

In this application for dispute resolution, the tenant applied on January 24, 2022 for:

- compensation because the landlord ended the tenancy and has not complied with the Act or used the rental unit for the stated purpose;
- compensation for monetary loss or other money owed;
- an order for the return of the security deposit and/or pet damage deposit; and
- recovery of the filing fee.

Those in attendance were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The landlord testified he received the tenant's Notice of Dispute Resolution Proceeding (NDRP) but not her evidence. The tenant testified she served her materials on the landlord by non-registered mail on August 16, 2022, but provided no proof of service as required by Rule 3.5. Therefore, I find the tenant did not serve her evidence on the landlord in accordance with section 89 of the Act, and I will not consider it in my decision.

The tenant did not raise an issue regarding service of the landlord's responsive evidence.

Issues to be Decided

- 1) Is the tenant entitled to compensation because the landlord ended the tenancy and has not complied with the Act or used the rental unit for the stated purpose?
- 2) Is the tenant entitled to compensation for monetary loss or other money owed?

- 3) Is the tenant entitled to a monetary order for the return of the security deposit?
- 4) Is the tenant entitled to the filing fee?

Background and Evidence

The parties agreed on the following particulars regarding the tenancy. It began October 1, 2019; the tenant vacated the rental unit on December 18, 2021; rent was \$900.00, due on the first of the month, and the tenant paid a security deposit of \$450.00, which the landlord still holds.

The landlord testified the tenant abandoned the unit, leaving the keys in the door, which the landlord found on December 19.

The parties agreed the landlord served the tenant with a handwritten two-month notice to end tenancy, not a [Two Month Notice to End Tenancy for Landlord's Use of Property](#) (#RTB-32). The tenant confirmed she did not dispute the landlord's notice.

The landlord submitted as evidence a letter from the municipality, stating that the landlord is being charged a fee and a penalty for an unregistered secondary suite, and that if the municipality confirms the suite has been removed from the property, they will stop charging the landlord.

The tenant testified she did not provide the landlord with a forwarding address in writing. The landlord testified he contacted the tenant after she moved out, but she did not reply.

The parties agreed the tenant did not authorize the landlord to keep any part of the security deposit.

The tenant testified she left the unit clean when she vacated it. The landlord submitted that the tenant left the unit dirty and damaged, but the landlord did not apply for authorization to retain the tenant's security deposit.

Analysis

Claims for 1) compensation because the landlord ended the tenancy and has not complied with the Act or used the rental unit for the stated purpose, and 2) for compensation for monetary loss or other money owed

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.

The parties agreed the landlord served the tenant with a handwritten two-month notice to end tenancy, not a [Two Month Notice to End Tenancy for Landlord's Use of Property](#) (#RTB-32).

Section 49 of the Act permits a landlord to end a tenancy to allow the landlord to use the property, when specific conditions are met; 49(7) states that a notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

Section 52 includes that in order to be effective, a notice to end a tenancy must be in writing and must, when given by a landlord, be in the approved form.

As the parties testified the notice to end tenancy served by the landlord was handwritten, and not the #RTB-32 form, I find the landlord's notice is not in the approved form as required under section 52 of the Act. Therefore, I find the landlord's notice is without force or effect.

As the tenant was not served an effective notice to end tenancy, could have applied to dispute the landlord's ineffective notice, and did not have to move, I dismiss the tenant's applications for compensation because the landlord ended the tenancy and has not

complied with the Act or used the rental unit for the stated purpose, and the tenant's application for compensation for monetary loss or other money owed, as the later claim is regarding moving charges.

Claim for the security deposit

Section 38 of the Act requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy, or, upon receipt of the tenant's forwarding address in writing.

The tenant testified that she did not provide the landlord with her forwarding address in writing.

As the tenant has not provided the landlord with her forwarding address, the tenant's claim for the return of the security deposit is dismissed with leave to reapply. Leave to reapply does not extend any statutory timelines.

Section 39 of the Act states that if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy, the landlord may keep the security deposit, and the right of the tenant to the return of the security deposit is extinguished.

Based on the testimony of the parties, I find the tenancy ended on December 18, 2021, the date the tenant vacated the rental unit.

Conclusion

The tenant's application is dismissed.

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: October 04, 2022

Residential Tenancy Branch