



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 in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied for compensation related to being served with a Two Month Notice to End Tenancy for Landlord's Use and to recover the fee for filing this Application for Dispute Resolution.

The Tenants submit that the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch by the Tenant was served to both Landlords, via registered mail on May 12, 2022. The Landlords acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On November 07, 2022 the Landlords submitted evidence to the Residential Tenancy Branch. The Landlords submit that this evidence was served to the Tenant, via registered mail, on November 07, 2022. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided

Is the Tenant entitled to compensation, pursuant to section 51(2) of the *Act*, because steps were not taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice or the rental unit was not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice?

Background and Evidence

The Landlords and the Tenant agree that this tenancy began in 2013.

The male Landlord stated that the rental unit was vacated on November 16, 2021 and the female Tenant stated that it was vacated in, or about, November 15, 2021.

The Tenant stated that the male Landlord personally served her with a Two Month Notice to End Tenancy, pursuant to section 49 of the *Act*, on September 10, 2021, which is 6 days prior to the date of the Two Month Notice to End Tenancy. The Notice declares that the Landlord or a close family member of the Landlord intends in good faith to occupy the rental unit. The Notice declares that the Tenants must vacate the rental unit by November 30, 2021. A copy of the Notice to End Tenancy was submitted in evidence.

The Landlords and the Tenant agree that the parties signed a mutual agreement to end the tenancy, effective June 30, 2022. The agreement indicates that this was signed by the Landlord on September 15, 2021. A copy of that agreement was submitted in evidence.

The male Landlord stated that when the parties were discussing a mutual agreement to end the tenancy, he provided the Tenant with two mutual agreements to end tenancy with the understanding she would sign one of them. He stated that one of the mutual agreements to end the tenancy declared that the tenancy would end on June 30, 2022 and he thinks the other declared that it would end in February of 2022.

The Tenant stated that when the parties were discussing a mutual agreement to end the tenancy, the Landlord provided her with two mutual agreements to end tenancy with the understanding she would sign one of them. She stated that one of the mutual agreements to end the tenancy declared that the tenancy would end on June 30, 2022 and she thinks the other declared that it would end in November of 2021.

When the Tenant was asked if she had any proof that the Landlord served her with the Two Month Notice to End Tenancy for Landlord's Use that was submitted in evidence, she referenced the text messages exchanged on September 19, 2021 which were submitted in evidence by the Landlord. She submits that her response that she chose the "long term" option supports her testimony that a Two Month Notice to End Tenancy for Landlord's Use.

The male Landlord submits that in the text messages of September 19, 2021, the parties were discussing the mutual agreement to end the tenancy. He notes that there is no reason for a Tenant to sign a Two Month Notice to End Tenancy for Landlord's Use so she could not have been referring to a Two Month Notice to End Tenancy for Landlord's Use in those exchanges.

The male Landlord stated that his signature appears on the mutual agreement to end the tenancy which was submitted in evidence. He stated that the signature on the Two Month Notice to End Tenancy for Landlord's Use is not his signature.

Analysis

In the absence of evidence to the contrary, I find that the Tenant was paying monthly rent of \$800.00 at the end of this tenancy.

In the case of verbal testimony when one party submits their version of events and the other party disputes that version, it is incumbent on the party bearing the burden of proof to provide sufficient evidence to corroborate their version of events. In the absence of any documentary evidence to support their version of events or to doubt the credibility of the parties, the party bearing the burden of proof would fail to meet that burden.

As the Tenant is seeking compensation for being served with a Two Month Notice to End Tenancy for Landlord's Use, the Tenant bears the burden of proving one was served. I find that the Tenant has submitted insufficient evidence to corroborate her

testimony that the Landlords served her with the Two Month Notice to End Tenancy for Landlord's Use that was submitted in evidence or to refute the male Landlord's testimony that it was not served to the Tenant by the Landlord.

I have placed little weight on the undisputed evidence that the parties signed a mutual agreement to end the tenancy, effective June 30, 2022, as it does not help me determine whether the Two Month Notice to End Tenancy for Landlord's Use was served.

The signing of the mutual agreement to end the tenancy could be interpreted to support the Landlords' submission that a Two Month Notice to End Tenancy for Landlord's Use was not served because there was no need to sign a mutual agreement if the tenancy was ending on the basis of the Two Month Notice to End Tenancy for Landlord's Use. Conversely, I find it possible that the mutual agreement was signed by the Tenant in an effort to extend the tenancy past the effective end date of the Two Month Notice to End Tenancy for Landlord's Use.

I have placed little weight on the text messages exchange on September 19, 2021. There is nothing in those messages which, in my view, support the Tenant's submission that she was served with a Two Month Notice to End Tenancy for Landlord's Use.

Although evidence from a handwriting expert was not submitted in evidence, I have viewed the male Landlord's signatures on the Two Month Notice to End Tenancy for Landlord's Use and on the mutual agreement. I find that they are not particularly similar and I cannot, on the basis of those signatures, conclude that the male Landlord signed the Two Month Notice to End Tenancy for Landlord's Use.

Section 51(2) of the *Act* stipulates that a landlord who serves notice to end a tenancy pursuant to section 49 of the *Act* must pay a tenant 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 the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and the rental unit 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.

As the Tenant has failed to establish that the Tenant was served with a Two Month Notice to End Tenancy for Landlord's Use, which is the form used to end a tenancy

pursuant to section 49 of the *Act*, I cannot conclude that the Landlords are subject to the penalty imposed by section 51(2) of the *Act*. I therefore dismiss the Tenant's claim for compensation pursuant to section 51(2) of the *Act*.

I find that the Tenant has failed to establish the merit of her Application for Dispute Resolution and I dismiss the application to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Application for Dispute Resolution 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 *Act*.

Dated: January 17, 2023

Residential Tenancy Branch