



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants May 27, 2022 (the “Application”). The Tenants applied for compensation because their tenancy ended as a result of a 2, 4 or 12 Month Notice to End Tenancy, and the Landlord has not complied with the *Residential Tenancy Act* (the “Act”) or used the rental unit for the stated purpose.

Tenants T.W. and E.W. (the “Tenants”) appeared at the hearing. Nobody appeared at the hearing for the Landlord. I explained the hearing process to the Tenants. I told the Tenants they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Tenants provided affirmed testimony.

Service

Neither party submitted evidence for the hearing.

I asked the Tenants about service of the hearing package and Tenant T.W. testified that the hearing package was sent to the Landlord at the rental unit. T.W. testified that the rental unit was a residence in a house with the rental unit in the upper part of the house and five suites in the lower part of the house. T.W. testified that the Landlord did not live at the house during the tenancy. T.W. testified that mail for the Landlord was still sent to the house. T.W. testified that there is no written document showing the Landlord agreed they could be served at the rental unit. T.W. did not have a copy of the written tenancy agreement such that they could see what address for service the Landlord provided on it. T.W. testified that the Tenants were never issued a notice to end tenancy on an RTB form such that they had the Landlord’s address for service on such a form. T.W. testified that the Landlord simply told the Tenants that if they did not pay

higher rent they had to move so someone who would pay higher rent could move into the rental unit. T.W. testified that the conversations between the Landlord and Tenants were verbal or by text and that the Tenants never received a notice to end tenancy on an RTB form. T.W. testified that the Landlord told them verbally they could serve the Landlord at the rental unit address. T.W. testified that the Landlord did not move into the house after the Tenants moved out and that someone else moved into the rental unit.

Pursuant to rule 3.5 of the Rules, the Tenants had to prove service of the hearing package on the Landlord. Pursuant to section 89(1) of the *Act*, the Tenants had to serve the Landlord in person, in person to an agent for the Landlord, at the Landlord's residence or at an address at which the Landlord carries on business as a landlord.

I am not satisfied based on the testimony provided that the Tenants served the Landlord at the Landlord's residence or an address at which the Landlord carries on business as a landlord because I am not satisfied the rental unit is either. I also note the complete absence of any supporting evidence from the Tenants in this matter.

Given I was not satisfied of service, and the Landlord did not appear at the hearing, I dismissed the Application with leave to re-apply.

Section 51 Compensation

I told the Tenants during the hearing that there is no legal basis for them to re-apply for compensation pursuant to section 51 of the *Act* which states:

51 (1) **A tenant who receives a notice to end a tenancy under section 49** [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement...

(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...

Tenant T.W. acknowledged the Tenants were never served a notice to end tenancy on an RTB form and therefore the Tenants did not receive a notice to end tenancy under section 49 of the *Act* and the Tenants are not entitled to compensation pursuant to section 51 of the *Act*.

Conclusion

The Application is dismissed with leave to re-apply.

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: February 07, 2023

Residential Tenancy Branch