



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC, FFT

Introduction

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

- compensation of \$4,719.60 because the tenancy ended as a result of a two, four, or 12 Month Notice to End Tenancy, and the landlord has not complied with the Act or used the rental unit for the stated purpose; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant's son (JK) testified, and the landlord's agent (MC) confirmed, that the tenant served the landlord with the notice of dispute resolution package and supporting documentary evidence. The landlord testified, and the tenant confirmed, that the landlord served the tenant with their documentary evidence. I find that all parties have been served with the required documents in accordance with the Act.

Preliminary Issue – Amendment of Address of Rental Unit

At the outset of the hearing the tenant indicated that she had neglected to include the unit number of the rental unit on her application. With the consent of both parties, I order that the application be amended to include the rental unit's unit number.

Issues to be Decided

Is the tenant entitled to:

- 1) a monetary order of \$4,719.60; and
- 2) recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written, fixed term tenancy agreement starting April 1, 2021 and ending March 31, 2022. Monthly rent was \$2,359.80 and was payable on the first of

each month. The tenant paid the landlord a security deposit of \$1,150, which the landlord returned to the tenant.

The tenant testified that in early February 2022, she received text message from the landlord's realtor asking her to move out of the rental unit because the owner of the rental unit wanted to sell it. Shortly thereafter, the landlord sent her a signed a copy of a mutual agreement to end tenancy as of April 15, 2022. The tenant did not sign it and sent it back to the landlord.

MC confirmed this. He testified that he sent the mutual agreement to end tenancy to the tenant because she had told him that they might move out of the rental unit, but were not sure.

The tenant testified that she thought she had to move out of the rental unit because the owner was selling it. She stated that in February 2022, she asked the landlord for an extension to allow them to remain in the rental unit until April 15. Her family left that day.

MC stated that the tenant did not tell him she was moving out of the rental unit on April 15, and that he did not find out she had moved out until April 17.

The tenant testified that on May 11 she discovered an advertisement online listing the rental unit for rent at \$3400. She argued that the owner never intended to sell the rental unit, and instead used it as an excuse to evict the tenant and re-rent the rental unit at a higher rate.

MC stated that the landlord wanted to sell the unit in February 2022, as the real estate market was very good, but the tenant was not cooperating with the showings. By the time the tenants moved out, interest rates had increased significantly, and the owner was unable to secure a buyer. Accordingly, landlord re-rented the rental unit.

Analysis

The type of application brought by the tenant is designed for circumstances where a tenant receives a formal notice to end tenancy form issued under the authority of section 49 of the Act. In this case, the tenant did not receive an official notice to end tenancy issued under that section or any other section of the Act.

As such, the tenant is not entitled to the monetary compensation authorized by section 51 of the Act, which deals with compensation owed when a landlord does not use the rental unit for the purpose stated on the official notice to end tenancy.

The Act does not permit a landlord to end a tenancy because the landlord wants to sell the rental unit. It only permits a tenancy to be ended if the property is sold, and the buyer indicates they require vacant possession of the rental unit for their own use: section 49(5) of the Act.

Accordingly, in these circumstances, there was no official notice that the landlord *could* have served the tenant which would have brought about the end of the tenancy. However, the tenancy did not end pursuant to any official notice to end tenancy. Rather, it ended when the tenant vacated the rental unit on April 15, 2022. The tenant was not under any obligation to vacate the rental unit on that date. The mere fact that the landlord requested the tenant to move out does not mean that she was obligated to do so.

As such, I do not find that the tenancy ended due to the actions of the landlord. Without a valid notice to end tenancy issued under the authority of the Act, or a signed mutual agreement to end tenancy, the tenant did not have to move out of the rental unit.

If a party breaches the Act, they must compensate the other party for any loss that party suffered as a result of that breach: see section 7 of the Act. In this case, I do not find that the landlord breached the Act or tenancy agreement by asking the tenant to move. The tenant had no obligation to comply with this request.

As the landlord did not breach the Act, the tenant is not entitled to any financial compensation.

As the tenant has been unsuccessful in her application, she is not entitled to recover the filing fee.

Conclusion

I dismiss the tenant's application, 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 *Residential Tenancy Act*.

Dated: May 10, 2023

Residential Tenancy Branch