



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kendall Property Management
and 709605 Alberta Ltd/W1005 Holdings Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlords for the cost of this application.

Both Parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agree that this month to month tenancy started on January 13, 2012 and ended on August 01, 2012. Rent for this unit was \$1,000.00 per month and was due on the first day of the month.

The tenant testifies that the landlord KK called the tenant to say the owners of the unit were thinking of selling of the unit and could the landlord bring a realtor around to appraise the unit. Later the tenant testifies the landlord called to inform the tenant that the owners were going to serve the tenant a Two Month Notice to End Tenancy. The tenant testifies when she received the Two Month Notice in June, 2012. The reason given on the Notice was that the rental unit will be occupied by the landlord, the landlord spouse, or a close family member of the landlord or the landlord's spouse. The tenant testifies that she moved out early and discovered that the unit had been listed for sale as a vacant property. The tenant testifies that later the tenant determined that the unit had been sold by the realtor who had appraised the unit. The tenant states that as the unit was not used for the intended purpose as stated on the Two Month Notice the tenant seeks compensation of two months' rent to the sum of \$2,000.00. The tenant also seeks to recover the \$50.00 filing fee.

The landlord testifies that the tenant was informed that the property had gone into foreclosure and when this happens and the property goes back to the bank then there is nothing the property management company can do about it. The landlord testifies that they wanted to give the tenant enough notice to find another place to live so the Two Month Notice was issued to the tenant. The landlord testifies as there is nowhere on the form to indicate that the property has been foreclosed on then the landlord checked the box that the landlord will occupy the property. The landlord testifies that after the foreclosure the property management company no longer had anything to do with the property and the property was sold by the bank.

The landlord testifies that they sought advice from the Residential Tenancy Office and were told the matter would go to Supreme Court under the banking *Act*.

The tenant disputes the landlord's testimony and testifies that the landlord did not inform the tenant that the unit was going into foreclosure. The landlord only informed the tenant that the owners were thinking of putting the property up for sale. The tenant testifies that

as the property management company and the owners name is on the tenancy agreement with the property manager's address then the tenant served the hearing documents to the property management company.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties I find that s. 51 of the *Act* states that if a landlord or purchaser does not take steps to accomplish the stated purpose for ending the tenancy under s. 49 of the *Act* within a reasonable period after the effective date of the notice or the rental unit is not used for that stated purpose for at least 6 months the landlord or purchaser must pay the tenant an amount that is equivalent to double the monthly rent payable under the tenancy agreement.

I find that the unit was sold and was not used for the intended purpose as stated on the Two Month Notice. If the unit had gone into foreclosure then the landlord should have provided relevant documents to the tenant so the tenant could have taken action through the courts and filed an "Appearance" form that tells the other party in the foreclosure proceedings that the tenant would like copies of all subsequent court documents sent to the tenant. This lets the court know that the tenant is involved in the foreclosure. The tenant should also have been named as a respondent on any petition with the courts for foreclosure. Furthermore I have no evidence from the landlord to show that this property was foreclosed on and not just sold. I refer the landlord and tenant to consider information concerning Foreclosures on the Tenant Resource and Advisory Centre (TRAC) for future reference.

The fact remains that the rental suite has not been used for the intended purpose as stated on the Two Month Notice. Consequently, I conclude that the landlord issued the Notice to End Tenancy for landlord's Use of the Property and have failed to use the rental unit for the purpose stated on the notice. Therefore, I find that the respondents are in breach of s. 49(5)(c) of the *Act*.

I further find that pursuant to s. 51 of the *Act* that the tenant is entitled to compensation to an amount that is equivalent to double the monthly rent payable under the tenancy agreement. If damage or loss results from a party not complying with the *Act*, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party pursuant to s. 67 of the *Act*. As such I find the tenant is entitled to a Monetary Order to the amount of **\$2,000.00**. As the tenant has been successful in this matter, they are also entitled to recover their **\$50.00** filing fee pursuant to section 72(1) of the *Act*.

Conclusion

I HEREBY FIND in favor of the tenants monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$2,050.00**. The order must be served on the respondents and is enforceable through the Provincial Court 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 29, 2013

Residential Tenancy Branch