



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MR. RENT 360 PROPERTY MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNDC FF

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) An Order for a compensation for the breach of a fixed term lease; and
- b) To recover the filing fee for this application.

SERVICE

Both parties attended the hearing and the tenant provided evidence of service of the Application for Dispute Resolution by registered mail and the landlord acknowledged receipt. I find the documents were served pursuant to sections 88 and 89 of the Act for the purposes of this hearing.

Issue(s) to be Decided:

Have the tenants proved on the balance of probabilities that they are entitled to compensation for the breach of their fixed term lease and to recover the filing fee for this application?

Preliminary Issue:

The landlord requested that the Respondent's name be amended to omit the name of the private individual who is an employee. The tenant had no objection so the amendment was made.

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to present evidence and make submissions. The tenants provided evidence that they viewed the unit on August 11, 2013, negotiated through an agent with the landlord and entered into a fixed term lease on August 20, 2013 for a tenancy to commence on October 1, 2013; they paid a security deposit of \$700, and agreed to rent the unit for \$1400 a month.

They said they had searched for a long time to find this suitable unit and gave notice to their present landlord, relying on their lease. On September 9, 2013, the agent for the landlord telephoned them and told them that it was contrary to the strata regulations to rent the units; the tenants said he then promised to compensate them in the amount of one month's rent. The tenants said they pleaded with him to make application to the strata to get a conditional variance or rental from the strata but their request was not acknowledged. They received a refund of their security deposit on September 12, 2013. They said that they had only 19 days left in the month to find another place, they had to take time off work and that they had to settle for a unit which did not meet all their criteria. They request \$1400 in compensation.

The landlord said that they represented the owner who was a new purchaser and did not realize the rental restrictions. He pointed out that the lease would be void for it was illegal to rent to the tenants and that the strata would have imposed fines which the tenants would have had to pay if the tenancy had continued. He said the owner took possession back from their company and he does not know what happened to the unit. He said that the tenants incurred no costs or damages and questions whether the tenancy had actually started.

In evidence is a statement of the chronology of events by the tenant, a copy of the lease signed by both parties and a copy of the security deposit cheque.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

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Analysis:

Section 44 of the *Residential Tenancy Act* sets out how a tenancy may be ended. Section 44(1)(a)(v) appears to be the section that most closely applies to this situation as I find the landlord took over the property again for his own use, whether to occupy or resell it is unknown. While the landlord contended that the lease is illegal, I find insufficient evidence to support this argument. There were no government orders to vacate the property which would be a cause under section 47(1)(k). Section 49 provides that a tenancy might be ended for the landlord's use of the property and, in that case, the landlord must compensate the tenants by giving them a free month's rent or rent refund.

While the landlord contended the tenants had not proved costs, I find that sections 49 and 51 most closely apply to this situation and they entitle the tenants to one month's rent in compensation. Costs need not be proven as the Act sets out the legal entitlement to compensation of one month's rent when the landlord takes back the

property for his own use. I find the tenants entitled to a monetary order for one month's rent or \$1400.

Furthermore, I find this was a fixed term lease and the landlord could not legally end it until the end of the lease. I find the landlord breached the lease by not allowing the tenants to occupy the unit. The landlord argued that the lease might not be effective. While it might be contended that the lease was frustrated, I find the *Residential Policy Guideline* number 35 states, "A party cannot argue that a contract has been frustrated if the frustration is the result of their own deliberate or negligent act or omission". In this case, I find the landlord or agent was negligent in not obtaining the necessary information on the strata rules regarding rentals before entering into a tenancy agreement with these tenants. I find this was a legal tenancy agreement and the tenants relied on it to their detriment as they did not find out it was cancelled until after they had given a notice to end tenancy at their old address. I find it credible that the supply of housing to meet their criteria was limited and as they had to find a new place within 19 days, they had to settle for a lesser unit than they had desired. However, I find they have been adequately compensated with the month's rent.

Conclusion:

I find the tenant entitled to a monetary order as calculated below and to recover filing fees for this application.

One month's rent	1400.00
Filing fee	50.00
Total monetary order to tenant	1450.00

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 29, 2013

Residential Tenancy Branch

