



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding IMH POOL XILV LP - METCAP LIVING
STARLIGHT INVESTMENTS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, FF

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The corporate landlords were represented by their counsel, AC (the "landlord").

As both parties were in attendance I confirmed there were no issues with service of the tenant's application for dispute resolution or either party's evidentiary materials. The parties confirmed receipt of one another's materials. In accordance with sections 88 and 89 of the *Act*, I find that the landlords were duly served with the tenant's application and the parties were served with copies of the respective evidentiary materials.

Issue(s) to be Decided

Is the tenant entitled to a monetary award for damages and loss?

Is the tenant entitled to recover the filing fee of this application from the landlords?

Background and Evidence

The parties agreed on the following facts. This periodic tenancy began in June, 2015. In November of 2015 the landlords offered the tenants of the rental building an incentive program where the tenants would be eligible for a monetary payment if they ended their tenancy by a certain date. The tenant did not end the tenancy in accordance with the incentive program in 2015.

The incentive program was revived in 2016. By a letter dated September 12, 2016 the corporate landlords informed the tenant that the incentive opportunity was extended until November 30, 2016. The letter said the tenant was eligible to participate in the incentive to terminate the lease in exchange for a one-time cash payment. The landlords' letter invited the tenant to, "learn more about this Building Incentive Program opportunity" by contacting the residence manager. The tenant testified that the letter was delivered by post and he received it at some point after September 15, 2016.

The tenant gave the landlord a notice to end the tenancy on September 15, 2016 stating that the tenancy would end on September 30, 2016. On the Notice the tenant indicated that the reason for moving was health reasons. The tenant testified that the ongoing construction work around the rental building influenced his decision to terminate the tenancy. The tenant testified that he discussed the short notice with the building manager and was advised that it would be treated as proper notice to end the tenancy. The tenant testified that the Building Incentive Program and the one-time cash payment were not discussed at that time.

The tenant claims that the tenancy was ended during a time when the Building Incentive Program was available and he is therefore entitled to a cash payment. The tenant claims the amount of \$5,000.00. The tenant testified that he chose the amount based on discussions with other residents of the rental building. The tenant said that he chose an amount that he felt was the average of the cash payments he heard was received by residents who participated in the Building Incentive Program.

Analysis

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I find there is insufficient evidence that the tenant suffered a loss because of the landlords' violation of the Act, regulations or agreement. I find that there was no agreement between the tenant and the landlords for a cash payment. The letter of September 12, 2016 states that the tenant is eligible to participate in the program, and provides information to the tenant, about whom he should contact for further information about the opportunity. I find that the letter of September 12, 2016 is merely a statement indicating the landlords' general desire to make a contract if suitable arrangements could be reached. The letter makes no mention of the amount of the cash payment that the tenant would receive. I find that the letter was not a binding promise, but merely an invitation, informing the tenant that an incentive opportunity existed and how more information could be obtained.

The tenant testified that he first received the letter dated September 12, 2016 after he had given his notice to vacate on September 15, 2016. There is no evidence that the incentive program was discussed by the tenant and the landlords before or after the notice to vacate was issued. The tenant said that he came up with the amount of his claim based on anecdotal evidence from other residents. If an enforceable agreement between the tenant and the landlords existed, it is reasonable to expect that an essential term such as the amount of cash payment would have been discussed and agreed upon by the parties.

I find that the letter of September 12, 2016 did not create an obligation on the landlords to issue cash payment to all tenants who vacated their rental units. The letter informs the tenant of the opportunity but it is clear that further details were intended to be discussed. I do not find that the landlord was obligated to issue cash payment to the tenant simply because the tenancy coincidentally ended during a period when the program was available.

Based on the evidence of the parties I find that there was no agreement between the tenant and the landlords that obligated the landlords to issue a monetary payment and the tenant did not suffer a loss.

As the tenant's application was unsuccessful he is not entitled to recover the filing fees for this application.

Conclusion

The tenant's application is dismissed.

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 12, 2017

Residential Tenancy Branch