



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RE/MAX MASTERS REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNDC RR O FF

Introduction:

Both parties attended the hearing and gave sworn or affirmed testimony. The landlord confirmed receipt of the tenants' Application for Dispute Resolution by registered mail. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- (a) A monetary order pursuant to sections 49, 50 and 51 for a rent refund of \$6,600 as the landlord served a notice under section 49 for landlord's use of the property and did not provide a free month's rent contrary to section 51 and also did not occupy the property as stated; and
- (b) recovery of the filing fee for this application.

Issue(s) to be Decided:

Has the tenant proved on the balance of probabilities that they are entitled to compensation as claimed and to recover filing fees for the application?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced July 1, 2016, current rent was \$3300 a month and security and pet damage deposits totalling \$3200 were paid. Both parties confirmed that the deposits were fully returned as the tenants had left the unit in good condition.

On May 1, 2018, the landlord sent an email to say the owner was returning and would need to occupy the property. The tenants vacated in response to this email. The parties confirmed there was no Notice to End Tenancy under section 49 served. The owner decided not to return but the tenants had already signed a new lease elsewhere. The landlord re-rented the unit. The landlord confirmed they had made a mutual agreement by email to excuse the tenant's from paying rent for June 2018 as they were good tenants and the landlord was sorry for their

inconvenience..

The tenants are requesting two months rent refund because the owner did not occupy the unit as stated.

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

Analysis

As explained to the parties in the hearing, entitlement to compensation of one or two months rent in section 51 is triggered by a section 49 Notice to End Tenancy. In this case, I find there was no section 49 Notice served and the tenants moved out in response to an email. I find they are not entitled to compensation under section 51 of the Act.

In respect to the free month's rent for June 2018, I find they made a mutual agreement with the landlord so they are entitled to that compensation which the landlord has already paid.

Conclusion:

I dismiss the application of the tenants in its entirety without leave to reapply and I find they are not entitled to recover filing fees for this application due to lack of success.

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 04, 2018

Residential Tenancy Branch