



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REMAX CREST REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement and to recover the filing fee from the landlords for the cost of the application.

The tenant attended the hearing however no one for the landlords joined the call.

At the commencement of the hearing I questioned the tenant with respect to the Style of Cause, and given that the names are transposed in the Residential Tenancy Branch on-line system, I amended the application. The frontal page of this Decision reflects that amendment.

The tenant advised that the landlord was served with the tenant's application and notice of this hearing on September 20, 2018 by registered mail and has provided copies of a Registered Domestic Customer Receipt and a Canada Post cash register receipt bearing that date and the same tracking number. The tenant also advised that the registered mail was addressed to only 1 of the landlords (CF) set out in the application and the amended Style of Cause. I am satisfied that the landlord (CF) has been served in accordance with the *Residential Tenancy Act*.

The tenant did not give affirmed testimony, but answered questions and provided evidentiary material, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for compensation resulting from the landlord's failure to use the rental unit for the purpose of residing in the rental unit?

Background and Evidence

This fixed-term tenancy began on September 7, 2016 and expired on September 30, 2017. A copy of the tenancy agreement has been provided as evidence for this hearing which states that at the end of the fixed term the tenant must vacate the rental unit. Rent in the amount of \$3,000.00 per month was payable on the 1st day of each month, which the tenant advised was paid in advance. The tenant vacated the rental unit on September 9, 2017 and the landlord refunded a half month's rent to the tenant.

At the outset of the tenancy the landlord also collected a security deposit from the tenant in the amount of \$1,500.00, all of which has been returned to the tenant.

The landlord had told the tenant that the landlord intended to move into the rental unit and the tenant had to vacate, but did not use the approved form to end the tenancy. The tenant moved out of the rental unit, however the landlord has not moved in, and the tenant has provided a copy of an advertisement to rent for \$3,000.00 per month, which also states that it has been re-rented. The tenant claims double the monthly rent, or \$6,000.00 for the landlord's failure to use the rental unit for the purpose communicated to the tenant. The evidentiary material of the tenant also states that the landlord sold the rental property in August, 2018.

Analysis

The *Residential Tenancy Act* requires a landlord to provide compensation if the landlord fails to use the rental unit for the purpose contained in a notice to end the tenancy. However, a notice to end a tenancy must be in the approved form. By not ending the tenancy according to the *Act*, the tenant did not have to move from the rental unit. Further, since the landlord did not serve a 2 Month Notice to End Tenancy for Landlord's Use of Property, the tenant is not entitled to the compensation referred to in Section 51, which states as follows (underlining added):

Tenant's compensation: section 49 notice

51 (1) A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if

(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or

(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Since the tenant has not been successful with the application the tenant is not entitled to recovery of the filing fee, and I dismiss the tenant's application in its entirety without leave to reapply.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed 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: January 18, 2019

Residential Tenancy Branch