



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Woodland Grandview LP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFT, MNDCT

Introduction

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

- a Monetary Order as compensation for damage or loss under the *Act* pursuant to section 67 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

The landlord and the tenant attended the hearing. All parties present were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The landlord confirmed receipt of the tenant's application for Dispute Resolution and receipt of their evidentiary package after the documents were sent by registered mail on December 7, 2019. Pursuant to section 88 & 89 of the *Act*, the landlord is found to have been served with all the documents.

The tenant confirmed receipt of the landlord's evidentiary package after it was sent to the tenant by Canada Post Registered Mail. The tenant is found pursuant to section 88 of the *Act* to have been served with this package in accordance with the *Act*. A copy of the registered mailing is listed on the cover page of this decision.

Issue(s) to be Decided

Is the tenant entitled to a monetary award pursuant to section 51(2) and 67 of the *Act*?

Is the tenant entitled to the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

The tenant provided testimony that this tenancy began on March 1, 2018 and ended on February 28, 2019, the tenant confirmed the monthly rent at the end of the tenancy was \$2,200.00

The tenant is seeking a monetary award of \$26,400.00 pursuant to section 51(2) of the *Act* which provides the tenant to receive the equivalent of twelve months rent compensation should the property not be used for the reasons cited.

The tenant argued that the landlord had failed to use the property in accordance with the mutual agreement and the contract that he signed. He testified that the property had not been demolished but re-rented.

The tenant testified after a few months after he vacated the rental unit, he noted a lantern and a barbecue in the yard and a car parked in the open garage

The landlord testified that there were a number of break- ins close to the rental unit. The landlord also testified that they had regularly removed junk and garbage that people placed on the property. The landlord testified that the property had not been re-rented, and she had no knowledge who owned the car that was parked on the property.

The landlord testified that the tenancy had ended mutually, and the tenant had signed a written non-disclosure agreement dated August 17, 2019 and had been compensated in the sum of \$10,100.00 for terminating his tenancy early and a copy of the Non-Disclosure agreement and Mutual End to Tenancy had been submitted in evidence by the parties.

The tenant presented submissions and evidence related to the fact that the property was not renovated following the issuance of the Non- Disclosure Contract and mutual end to tenancy.

Analysis

How a tenancy ends

44 (1)A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;

(c) the landlord and tenant agree in writing to end the tenancy

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended;

(g) the tenancy agreement is a sublease agreement.

After having considered the testimony of both parties and following a review of all evidentiary documents which includes submitted by both parties, I find that this tenancy ended by way of a mutual agreement. The parties agreed in writing to end the tenancy under section 44(1)(c) of the *Act*.

The compensation that the tenant seeks is only available when a tenancy ends under section 49 of the *Act*.

As this tenancy did not end pursuant to the issuance of a Notice to End Tenancy, I find the tenant is not entitled to claim compensation under 51(2) of the *Act*. Section 51(2) states:

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.

I therefore find the tenant is not entitled to compensation pursuant to section 51(2) of the *Act*.

For these reasons, I dismiss the tenant's application without leave to reapply. As the tenant was unsuccessful in his application, he must bear the cost of his own filing fee.

Conclusion

The tenant's application is dismissed 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: April 3, 2020

Residential Tenancy Branch