

DECISION

Dispute Codes: MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim.

Issues to be Decided

Is the mutual agreement to end tenancy a valid document?

Is the landlord entitled to a monetary for unpaid rent?

Background

On February 15, 2007, the landlord collected a security deposit from the tenants in the amount of \$550.00. The tenancy began on February 15, 2007. Rent in the amount of \$1100.00 is payable in advance on the fifteenth day of each month. The tenants failed to pay rent for the period between August 15 and September 15.

In early June of 2008, the landlord listed the rental property for sale. At the time, the tenants expressed their unwillingness to have prospective buyers walk through their rental unit. They verbally told the landlord that they were leaving at the end of June. Later, the tenant _____ told the landlord that they have changed their mind about ending their tenancy and were therefore rescinding their verbal notice to end tenancy.

On July 10, the landlord and the tenants signed a mutual agreement to end tenancy on September 15. The tenants maintained that they had signed this document based on the landlord informing them that he had sold the property. They also maintained that the landlord should have issued to them a notice to end tenancy for landlord's use. The tenants argued they were entitled to give 10 days notice to vacate the rental unit and to receive compensation for an amount equal to one month's rent.

The landlord maintained that he had never told the tenant that he sold the property. He

is therefore seeking to recover rent for the period between August 15 and September 15.

Analysis

The landlord's realtor said in a letter that the tenants had told him that they intended to vacate the rental unit at the end of June. The landlord, in his letter dated August 16, also stated that upon learning the property was listed for sale, the tenants had expressed their intention to vacate but subsequently rescinded their verbal notice to end tenancy. Specifically, the landlord wrote "... (_____) phoned me with the news that you are not leaving the place as you don't give any written notice ...". During the hearing, the landlord again confirmed the above is his testimony.

Yet, shortly after the tenants told the landlord they changed their minds about ending the tenancy, they signed a mutual agreement to end tenancy on July 10. I am of the opinion that there must have been a precipitating event or conversation to account for the tenants' sudden change of mind. On three occasions, the tenants explained that they signed this document based on the landlord informing them that the property was sold: twice in their letters addressed to the landlord dated August 14 and 16 and again in their testimony during the hearing. On the same issue, the landlord was silent.

Based on the above, I find the tenants' testimony to be credible and I have accepted the evidence that they signed the mutual agreement to end tenancy based on the landlord informing them that the property was sold. Accordingly, I also find the landlord to have obtained the mutual agreement to end tenancy by misrepresentation and thus the document is invalid. The landlord should have served the tenant with a 2 month notice to end tenancy for landlord's use of property.

Conclusion

Based on all of the above, I dismiss the landlord's application for a monetary order for unpaid rent and an order to keep the security deposit.

Dated October 22, 2008.