



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute Codes: MNR and FF

Introduction

This application was brought by the landlord seeking a Monetary Order for loss of rent and recovery of the filing fee for this proceeding after the tenants left a fixed term rental agreement prior to its expiry date.

Issue(s) to be Decided

This application requires a decision on whether the landlord is entitled to a Monetary Order for the loss of rent at the end of the tenancy.

Background and Evidence

This tenancy began August 1, 2007 under a 12 month fixed term rental agreement to July 31, 2008. Rent was \$1,850 per month and the landlord held a security deposit of \$925.

By email of February 28, 2008, the tenants gave notice that they had purchased a condominium and would be leaving the rental unit on March 31, 2008. They subsequently agreed that the landlord could retain \$500 from the security deposit to cover the liquidated damages clause in the rental agreement and an additional \$140 to cover the cost of carpet cleaning.

During the hearing, the tenants gave evidence that on purchasing the new condominium and giving notice early, they relied on representations from the property manager that they could leave the rental agreement by paying the \$500 in liquidated damages. They stated they had been given that assurance verbally before they signed the agreement and it was later reiterated in at least one email.

Specifically, the tenants emailed the landlord on February 8, 2008 announcing their intentions to actively seek a property to purchase and specifically enquiring as to how the early move would be handled.

In her reply the same date, the landlord stated, among other things, that, "To break your lease early, you will pay a \$500 fee which can be deducted from your security deposit if you like. This allows me to rent the suite again for the owner without further charges, i.e. advertising, etc."

The landlord stated that, if she had not intended the tenants to be responsible for future loss of rent, she would have inserted the word "only" into the foregoing statement.

The landlord stated that she would have expected the unit to rent quickly but that market factors had changed in that period.

As matters turned out, the tenants were moved by the end of March, but, to their surprise, not having found a new tenant, the landlord cashed the previously submitted rent cheque for April 2008. In the present application, the landlord seeks rent for May, having found a new tenant for June.

Analysis

Estoppel is principle of law that prevents a party from advancing a claim that is inconsistent with a position that party previously took by conduct or words and especially where a representation has been relied or acted upon by others.

I find that the tenants exercised appropriate caution in anticipating they might wish to leave the tenancy early and in raising the issue with the landlord both at the beginning of the tenancy and in advance of giving notice. I find that it was reasonable for the tenants, having raised a specific question, to assume that the response was true and complete, particularly when it was given by written email. They had expressed their intentions, enquired of the consequences, and made plans and agreements based on the reply.

Conclusion

Consequently, I find that the landlord gave and the tenants took assurance from the email of February 8, 2008 and the landlord is, therefore estopped from claiming the rent for May 2008. The application is dismissed without leave to reapply and the landlord remains responsible for her own filing fee.

January 15, 2009

Dispute Resolution Officer