



Dispute Resolution Services

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

Decision

Dispute Codes: OPC CNC MNDC OLC LRE FF

Introduction

This hearing dealt with applications by the tenants and the landlords. The tenants applied to cancel a notice to end tenancy, as well as for a monetary order for compensation, an order the landlord comply with the Act and an order suspending or setting conditions on the landlord's right to enter the rental unit. The landlords applied for an order of possession and a monetary order for money owed or compensation under the Act. One tenant, counsel for the tenant and both landlords appeared in the teleconference hearing.

The tenants submitted evidence after the conclusion of the hearing, which I did not admit or consider in this decision.

In their respective applications, the tenants and the landlords have each applied for a monetary order against the other in the amount of \$24,999. In February 2009 the tenants filed a claim against the landlords in the Supreme Court, for damages arising from the tenancy. As the monetary claims of both the tenants and the landlords are substantially linked to the Supreme Court matter, I dismiss their monetary applications with leave to reapply.

On March 6, 2009 the tenants received an order of the Supreme Court ordering that (1) the tenants pay into court their monthly rent of \$1450; (2) the landlords and any agents of the landlords may not enter the rental unit for any purpose related to a potential sale of the unit; and (3) the order expires on receipt of my decision on these applications. I will address below the issue of the landlords' right to enter for the purpose of a potential sale of the unit. In regard to the payment of rent, the tenant agreed in the hearing to take immediate steps to have the rent for March and April 2009 released to the landlord,

and to ensure that subsequent rent payments are made directly to the landlord when they are due. Should the landlords incur court costs to have the withheld funds released to them, they may apply for a monetary order against the tenants to recover those costs. As per the Supreme Court, the order of March 6, 2009 expires upon the parties' receipt of this decision.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Should the landlord be ordered to comply with the Act, regulation or tenancy agreement?

Should conditions be set on the landlord's right to enter the rental unit?

Background and Evidence

The tenancy began on November 1, 2008, with monthly rent of \$1450. There was no written tenancy agreement.

The tenant's evidence was that the tenancy was for one year and that the landlords agreed that they would not list the rental unit for sale during the tenants' occupancy. The tenant further testified that the landlords knew that the tenant was a lawyer and that he would be using one of the bedrooms in the rental unit as a home office. The landlords therefore ought to have understood that the tenant would have confidential documents in his home office.

On February 13, 2009 the landlords sought to show the rental unit to potential buyers, and the tenant refused to allow entry, on the ground that he had confidential documents related to his work in his home office, and that he had a responsibility to ensure solicitor-client confidentiality. The landlords gave the tenant another written 24 hour notice of intention to enter the premises for the purpose of showing to potential buyers, and the tenant forwarded the notice to the police. The tenant was expecting that the landlord would take proper steps at the Residential Tenancy Branch. On February 19,

2009 the landlords served the tenants with a one month notice to end tenancy for cause, on the ground that the tenant had significantly interfered with or unreasonably disturbed another occupant or the landlord. The tenants dispute the notice for cause as groundless, and seek an order that the landlords provide a written tenancy agreement. The tenant did not provide specific conditions to limit the landlord's right to enter the rental unit, but rather sought clarification on the landlord's right to enter and the tenant's right to refuse entry based on the tenant's responsibility to guard solicitor-client confidentiality.

The landlords' response was as follows. The landlords did not agree to a fixed term lease, and the tenancy was only to be month to month. The landlords were aware that the tenant was a lawyer, but they were not aware that he intended to practice his business from home and they did not provide any assurances of protection of solicitor-client confidentiality. The landlords did not agree that the rental unit would not be listed for sale. The tenant interfered with the landlords' right to enter the rental unit for the purpose of showing it to potential buyers.

Analysis

In regard to the notice to end tenancy for cause, I find that the landlords did not have sufficient cause at the time of issuing the notice to end the tenancy. As of February 19, 2009, the tenant had once denied entry to the landlord or potential buyers, and had raised his concerns to the police. I find that the tenants' actions as of the date of the notice did not amount to significant interference with the landlord. I therefore cancel the notice to end tenancy.

The Act and regulation require that all tenancy agreements be in writing and that the landlord provide tenants with a written copy of the tenancy agreement within 21 days of entering into the tenancy agreement. However, in the absence of a written tenancy agreement, the standard terms apply. In this case the tenancy commenced on November 1, 2008 on the basis of an oral agreement. I decline to order the landlord to provide a written tenancy agreement at this time, as there is little likelihood of

agreement between the landlords and tenants as to the terms of the agreement. I therefore dismiss that portion of the tenants' application.

In regard to the terms of the oral tenancy agreement relevant to this matter, I find that I prefer the evidence of the landlords as more credible. I do not find it credible that the landlords would have agreed to not sell the rental unit or to safeguard or otherwise accept responsibility for the tenant's confidential documents. Given the tenant's profession as a lawyer and his concern for protecting his clients' confidentiality, I find it somewhat incredible that the tenant did not insist on a written tenancy agreement prior to commencing the tenancy. I find that the tenancy is a month-to-month tenancy, and that the landlords did not agree either to not sell the rental unit during the tenancy or provide any assurances of protecting the confidentiality of the tenant's documents.

Even if there had been a written tenancy agreement with a term requiring the landlords to safeguard the tenant's solicitor-client confidentiality, that term would most likely be held unenforceable. It is the responsibility of a lawyer to ensure solicitor-client confidentiality, even as against the lawyer's spouse, and I find no term under the *Residential Tenancy Act* or regulation that would shift such responsibility to the landlord.

In regard to the landlord's right to enter the rental unit for the purpose of showing it to potential buyers, section 29 of the Act allows a landlord to enter a rental unit either if the tenant gives permission or if the landlord gives at least 24 hours' written notice that includes the purpose for entering, which must be reasonable, and the date and time of the entry, which must be between 8:00 am and 9:00 pm unless the tenant otherwise agrees. In this case, I find that the landlord gave proper notice of entry for a reasonable purpose, particularly as there was no agreement that the landlord would not sell the rental unit. Further, the tenant did not request specific conditions be placed on the landlord's right to enter. For those reasons, I dismiss this portion of the tenant's application.

Conclusion

The notice to end tenancy is cancelled, with the effect that the tenancy continues. I dismiss the portion of the landlords' application regarding an order of possession.

As the tenants' application was partially successful, the tenants are entitled to partial recovery of their filing fee, in the amount of \$50. The tenants may deduct that amount from the next month's rent.

As the landlords' application was not successful, they are not entitled to recovery of their filing fee.

Dated April 20, 2009.