



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNR, OLC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants to cancel a Notice to End tenancy for unpaid rent. The tenants are also seeking an Order for the landlord to comply with the *Residential Tenancy Act (Act)*, regulation or tenancy agreement and a Monetary Order to recover the filing fee.

The tenant served the landlord by registered mail on August 20, 2009 with a copy of the Application and Notice of Hearing. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Has the tenant provided sufficient evidence that the Notice to End Tenancy can be cancelled?
- Is the tenant entitled to an Order for the landlord to comply with the *Act*, regulations or tenancy agreement?
- Is the tenant entitled to recover the filing fee from the landlord for the cost of the application?

Background and Evidence

This tenancy started on April 01, 2009. The landlord testifies that rent for this property is \$1,050.00 per month payable on the 1st of each month. The tenants testify that they had a verbal agreement with the landlord that no rent would be charged for the property in exchange for renovation work carried out on another of the landlords' property.

The landlord issued the tenant with a 10 Day Notice for unpaid rent on August 17, 2009. This Notice stated that the amount of rent arrears was \$1,850.00. This included outstanding rent for June, 2009 of \$350.00, outstanding rent for July, 2009 of \$450.00 and rent arrears for August, 2009 of \$1,050.00. The landlord claims that since that time the tenants have not paid rent for September or October, 2009.

The tenants filed an application to dispute the rent owed and testifies that they had an agreement with the landlord to carry out renovations on one of her properties. This renovation work was completed before the tenants moved into the rental property and the tenants were paid a sum of money for materials but not for their labour costs. The tenants testify that they gave the landlord some money in June and July as she was hard up and they wanted to help her out but this was not rent payments. The tenants testify that they had an understanding with the landlord that they could live in the rental property rent free until it was sold.

The tenants have provided an undated, unsigned invoice for the work that was carried out on the landlords' renovation property and on the rental unit. The total amount stated for their labour costs was \$17,120.00.

The tenants also claim the landlord has changed the locks on their mail box and request she complies with the Act and reinstates their access to the mail box.

The landlords' agent testifies that the tenants and landlord did not have an agreement in place in which the tenants could live at the cabin rent free. The landlord made attempts to get the tenants to sign a tenancy agreement but was unsuccessful. The landlord agrees that the tenants did carry out some renovations on her other property and she paid them a total of

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\$8,300 of this \$3,600.00 was for materials (invoices supplied) and the remainder was for the tenants labour. This was paid in increment payments with the last payment made on March 18, 2009. The landlord believed at this time that all payments were made and the tenants did not request any additional payments until she served them with the 10 Day Notice in August, 2009. The landlord testifies that the tenant's were not working in April so she agreed she would forgive them the Aprils rent as the tenant was starting a new job. The tenants paid rent for May, 2009 and then only partial payments for June and July, 2009. The landlord testifies that this was rent and not money given to her to help her out as suggested by the tenants.

The landlord and one of the tenants had an agreement signed by both parties and witnessed that if the tenant introduced a buyer for the cabin the landlord would pay her \$5,000.00 commission fee and waive the outstanding rent payments.

The landlord agrees that she did change the lock on the mail box as she believed the tenants were not using it and had a separate post office box. The landlord testifies that the tenants have made it difficult to show the property to prospective buyers and have now changed the locks on the cabin.

Analysis

Section 26 of the Act states

Rules about payment and non-payment of rent

- 26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I find that there is insufficient evidence in place to determine if a tenancy agreement was in place for the tenants to rent this property for the amount of \$1,050.00 per month. In this matter,

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the Landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the Landlord's evidence is contradicted by the Tenant, the Landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

I find that the agreement signed by the landlord and tenant on August 12, 2009 concerning a \$5,000.00 fee and a waiver of outstanding rent if the tenant found a buyer for the property is an acknowledgement by the tenant that rent was owed. However, in terms of a tenancy agreement this information is vague about what rent was due to be paid and on which date. In the absence of any additional corroborating evidence, I find that the Landlord has not provided sufficient evidence to show that grounds exist to end the tenancy and as a result the landlord can not try to enforce a Notice to End Tenancy under the *Act*. The landlord will have to obtain vacant possession by another means as I decline jurisdiction in this matter.

Conclusion

In the absence of a written tenancy agreement and no corroboration of a verbal agreement pursuant to section 13 of the *Act* I find I have no jurisdiction in this matter. Therefore, the tenant's application is 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: October 09, 2009.

Dispute Resolution Officer