

Decision

Dispute Codes: OPR / OPB, MNR, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession for unpaid rent / breach of an agreement with the landlord, a monetary order as compensation for unpaid rent, compensation for damage or loss under the Act, regulation or tenancy agreement, in addition to recovery of the filing fee.

Both parties participated in the hearing and gave affirmed testimony. Following the early stages of the hearing, the parties raised their voices, became argumentative and frequently talked over one another.

Issues to be decided

- Whether the landlord is entitled to any or all of the above under the Act, regulation or tenancy agreement

Background and Evidence

Pursuant to a written residential tenancy agreement the fixed term of tenancy is from December 1, 2009 to December 31, 2010. While the tenancy agreement is signed by the two tenants who are the respondents in this application, four persons (including the respondents) are named in the tenancy agreement as the only persons authorized to occupy the unit.

Rent in the amount of \$2,000.00 is payable in advance on the first day of each month, and a security deposit of \$1,000.00 was collected on November 20, 2009.

The landlord sets out the details of the dispute in the application as follows:

I went to the tenants old address to let them know that they could move in and when [tenant KG] open the door you could smell the marajana was so strong and

I told him that they sign a contract that they are not to smoke in the house. He and the girl said if they could not smoke marajana in the house they are not moving into the house. So I left. And they have come after me for the deposit back and I have not rented the house as of the 15 of Dec, 2009. Marajana is illegal and I believe that they should pay for the rent until it is rented. **[reproduced as written]**

The parties all acknowledge the provision set out in the tenancy agreement concerning smoking in the unit, which reads as follows:

20. The tenant and his guests agrees not to smoke inside the rental unit at any time. If there is smoking you will be terminated within 30 days.

Arising from the submission set out above, the tenants take the position that neither tenant "KG" (who was present at the hearing) nor "the girl" informed the landlord's agent that they would not move into the unit if smoking inside was prohibited. The landlord's agent disagreed and claimed that his wife heard what was said. Neither "the girl" nor the wife of the landlord's agent were present at the hearing to testify.

The landlord's application does not include a specific application to keep the security deposit. It appears that the application for a monetary order for \$3,000.00 is comprised of December's unpaid rent of \$2,000.00, and \$1,000.00 as liquidated damages arising from the tenants' alleged breach of the tenancy agreement. The landlord's agent made no request to amend the application to include a specific application to keep the security deposit.

The landlord's agent testified that no appointment was made for the tenants to be given the keys for the unit. He stated simply that the tenants did "not come by" to collect the keys following his visit to the tenants' "old address." Further, the landlord's agent testified that other renters took possession of the unit effective February 1, 2010.

The tenants assert that, upon visiting their "old address," the landlord's agent made it very plain that he did not want them renting the unit. They claim that as a result of the

landlord's agent's presumptions about them and their behaviour, he declined to issue them with keys. In the result, they requested the return of their security deposit by undated letter to the landlord's agent which is shown as "received" on December 9, 2009.

Analysis

Based on the documentary evidence and testimony of the parties, I find that the parties entered into a tenancy agreement effective December 1, 2009. Section 16 of the Act addresses **Start of rights and obligations under tenancy agreement:**

16 The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

There is no evidence before me that either party gave notice to end the tenancy pursuant to the provisions in Part 4 of the Act, **How to End a Tenancy.**

Residential Tenancy Policy Guideline # 1 addresses "Landlord & Tenant – Responsibility for Residential Premises." Where it concerns "keys," this guideline provides as follows:

The landlord must give each tenant at least one set of keys for the rental unit, main doors, mail box and any other common areas under the landlord's control, such as recreational or laundry rooms. The tenant must return all keys at the end of the tenancy, including those he or she had cut at his or her own expense.

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that, after visiting the tenants at their "old address" and smelling what he determined was marijuana, the landlord's agent anticipated there may later be problems not only with smoking in the unit, but with smoking of an illegal substance. In order to avoid that prospect, I find that the landlord's agent chose not to issue unit keys to the

tenants. In effect, I find that the tenants were not given possession of the unit even while they entered into a tenancy agreement with the landlord.

As other renters now occupy the unit, I find that for all intents and purposes the subject tenancy has ended. I therefore dismiss the landlord's application for an order of possession.

Further, as I have found that the tenants were not given possession of the unit, I dismiss the landlord's claim for a monetary order for unpaid rent.

Additionally, I dismiss the application for compensation in the amount of \$1,000.00, for damage or loss under the Act, regulation or tenancy agreement. In part, I make this finding as there is insufficient evidence to support the landlord's claim that the tenants breached the tenancy agreement. Further, I find there is no provision in the tenancy agreement for what appears to be a claim for liquidated damages.

As the landlord has not succeeded in the application, I hereby also dismiss the application for recovery of the filing fee.

Neither party has filed to recover the security deposit. Both parties have the option to do so.

Conclusion

Pursuant to all of the above, I hereby dismiss the landlord's application.

DATE: February 3, 2010

Dispute Resolution Officer