



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes ET, FF

Introduction

This hearing was convened to deal with the landlord's application to end the tenancy early, and recover the filing fee for the cost of this application. Evidence was heard from both the landlord and tenant. A number of documents were entered into evidence by both the landlord and the tenant, which included a copy of a Contract of Purchase and Sale Addendum, but not the Tenancy Agreement.

Issues(s) to be Decided

Is the landlord entitled to an order ending the tenancy early and without notice?

Background and Evidence

The tenant was the owner of the property until it was sold to the landlords, with an agreement that the tenant/seller would rent the property from the purchasers. The Contract of Purchase and Sale Addendum was entered into evidence, and provided that, "...the Seller will rent the property from the Buyer commencing November 1, 2009 for a period of no more than 6 months and the Seller will vacate the premise on or before April 30, 2010. The Seller will make every effort to vacate the premises at an earlier date if possible. The Seller will provide the Buyer with one month's notice if he will vacate on an earlier date than April 30, 2010. Rent shall be \$1,000.00 per month and will be payable on the first day of each month. The Seller agrees to permit the Buyer to utilize the storage shed beside the main shop building for storage, and will also permit the use of the 2 bedrooms in the basement for storage purposes as of the

possession date of October 31, 2009.” The Tenancy Agreement was not entered into evidence, nor did I see a copy of it, and no security deposit was paid.

The landlord testified that this was not supposed to be a long tenancy; only short term until the tenant found another place to live or the end of April, whichever is first. The landlords were hoping to move into the house before Christmas, 2009. The landlords did store all of their furniture and items at the property in the basement and shed at the end of October, as per the agreement, and have been living with friends awaiting the move of this tenant so they could move into the house that they purchased.

The landlord also testified that this matter had been to dispute resolution before for a different issue, and at that hearing the Dispute Resolution Officer asked the tenant if he had found another place to live, but the tenant refused to answer the question.

The landlords are convinced that the tenant is no longer residing at the residence. They went away for a 3 week vacation in January, and attempted to get into the house prior to leaving, but could not reach the tenant. They returned on January 21, 2010 and drove to the residence on January 22, 2010. The place looked deserted. They drove by daily for 14 days and found that there was no smoke in the chimney, and no evidence of any activity on the property. Further, they testified that the tenant’s mailing address has changed.

The landlords are also concerned about the safety of the items they have stored at the property. They testified that the house across the street has been broken into, and the tenant has installed an alarm on the garage door where his items are being stored. There is no heat on in the house, and no alarm on the shed that the landlord’s items are being stored in, or on the house. They have requested an order to permit them to change the locks on the house.

The landlords have entered into evidence their written version of “Events of Feb 09/10 Police file#2010-119” where the landlords describe an alleged assault by the tenant. That document, and evidence of the landlords state that the assault took place while the

landlords were in the residence taking pictures including inside the fridge. Their reason for taking photos inside the fridge was for insurance purposes.

The Contract of Purchase and Sale Addendum also states that the firewood left at the end of the season would be included in the purchase price. The landlords state that 17 cords of wood were stacked at the residence, and the tenant has been taking it next door. They testified that their monetary application will be heard at a Dispute Resolution Hearing on March 31, 2010.

The tenant testified that when he was first approached, he told the realtor that he wasn't interested in selling until spring, 2010. He stated that he works in the machine shop on the property building cabinets, and has approximately \$50,000.00 worth of assets in that shop. He has moved 2 quads and a snowmobile in the yard in order to give the landlords a shed to use for storage. He also stated that he removed 2 sets of bedroom furniture into the family room to give the landlords the bedrooms to use for storage, as per the agreement.

The tenant testified that the police report that the landlords made regarding an assault is totally fabricated and untrue. He stated that the reason for taking pictures inside the fridge was to support their claim that he is no longer residing at the property, and they were being unreasonable. He states that they misled the RCMP by not informing them that they had already been to the residence earlier that day, and simply wanted a police escort to enter again.

He stated that he is still living there and has a cot to sleep on. The house was fully furnished until February 14, 2010. He moved most of his furniture to storage because the landlords put him on notice to do some renovations. He also has a travel trailer, 3 fridges, and a freezer full of food at the property. His new place is undergoing extensive renovations, including a new shop, but does not yet have an occupancy permit for that residence. He also testified that 4 trades-people are working at the new location, and expects it to be completed by April 30 or sooner, weather permitting.

The tenant stated that he did not change his mailing address. The post office changed their mail delivery system, and it went from a Post Office Box to a Rural Route number, and that changing the mailing address was not at his request or due to his actions.

The tenant's testimony about the firewood was that there never were 17 cords of wood there. Some wood has been moved to the carport so that he could use the tarp for furniture and still keep the firewood dry but he did not move it to a neighbour's residence. The shop that he works in is also heated with wood, and he is well within his rights to use the firewood for the remainder of his tenancy.

The tenant stated that the landlord put a lock on the shed they are using for storage on February 15, and moved their boat and trailer to the property without permission. He stated that their concern about safety to their belongings is a form of retaliation, and that he has a right to quiet enjoyment as a tenant.

Analysis

The Dispute Resolution process under the *Residential Tenancy Act* gives me full authority to enforce provisions of a Tenancy Agreement, not of a Contract of Purchase and Sale, which cannot be enforced through this process.

In the circumstances, I find that a fixed term tenancy agreement was entered into by the parties which expires on April 30, 2010 and that the tenant may give one month's notice if he intends to vacate the premises earlier.

Sections 47 and 56 of the *Act* are very explicit with respect to ending a tenancy early. Section 47 states that a landlord may end a tenancy by giving notice to end if the landlord has cause to end the tenancy. Section 56 describes the application for dispute resolution to request an order ending the tenancy if any of the issues described in Section 47 exist and that it would be unreasonable or unfair to the landlord to wait for a notice to end the tenancy under Section 47.

I find that the landlords' reasons for taking photographs of the inside of the fridge are not supported by their evidence. They stated that they did so to ensure it was working, to document the fact that it was empty, and to document the serial number for insurance purposes. It would not be necessary to take photos of the inside of an appliance to ensure that it is in good working order. I heard no evidence that the serial number is located inside the door of the appliance or that the photo was required for insurance purposes. I find that the landlords took photos solely for the purpose of proving that there was no food in it, to strengthen their position that the tenant is not residing at the property. I further find that the tenant was annoyed with the loss of quiet enjoyment, but I do not find that any assault took place, nor do I find that the landlords have any fear or reason to fear for their safety.

The landlords are concerned for the safety of the items they have stored at the property, but are at liberty to install alarms or double lock the storage shed they are using on the property, as long as it's done within the scope of the previous order of the Dispute Resolution Officer. The evidence before me has not described a situation that would support an application to end a tenancy under Section 47, or for an order under Section 56. I cannot find that the tenant has jeopardized the health or safety or a lawful right or interest of the landlord, or put the landlord's property at significant risk.

It may very well be that the tenant has no intention of leaving the property until spring 2010, which is what he told the realtor before he listed the property for sale, but he is well within his right to remain there until his own accommodation is ready to move into, or April 30, 2010 whichever comes first. At the hearing, the tenant testified that he would be able to move by April 30 or sooner, weather permitting. I find that the tenant is entitled to quiet enjoyment in the meantime. If the landlords were hoping to move in earlier, they ought to have contracted for that rather than April 30, 2010.

Conclusion

The landlord's application to end the tenancy early under Section 56 of the *Residential Tenancy Act*, and obtain an Order of Possession is hereby dismissed without leave to reapply.

Since the landlords have not been successful with their application, they are not entitled to recovery of the filing fee for the cost of this application.

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: February 24, 2010.
AMENDED March 12, 2010

Dispute Resolution Officer