

DECISION

Dispute Codes: OPT, MNSD and FF

Introduction

This application was brought by the tenants, initially seeking an Order of Possession for the rental unit, authorization for substitute service and recovery of the filing fee for this proceeding on the claim that the landlords failed to make the rental unit available under agreed to terms.

As a preliminary matter, an Order of Possession is no longer viable or sought as the rental unit has been occupied by new tenants and the applicant tenants no longer wish possession. For that reason, and as correspondence between the parties has centered on monetary compensation, I have exercised the discretion granted under section 64(3)(c) of the *Act* to permit the tenants to amend their application. The application was amended to a request for compensation for damage or loss under the legislation or rental agreement.

The request for substitute service is moot as the landlords remain reachable at the address the tenants have for them.

The application was further amended to add the name of a second party who is a co-owner of the rental building.

Issue(s) to be Decided

This application requires a decision on whether the tenants are entitled to monetary compensation as claimed.

Background and Evidence

This tenancy was set to begin on March 1, 2010 under a 12-month fixed term rental agreement at a rent of \$3,000 per month with security and pet damage deposits of \$1,500 and \$1,000 respectively.

The landlords reside in Quebec and much of the negotiation between the parties was conducted by email after the tenants responded to the landlords' Craigslist advertisement on January 26, 2010.

Negotiations had proceeded to the point where the tenants had forwarded cheques for the security and pet damage deposits and for future rent. While the landlord had not signed it, he had forwarded a standard form rental agreement to the tenants for signature.

On that basis, the tenants, who are expecting a child and to whom a fixed term agreement was of prime importance, had given Notice to End Tenancy to their landlord, had arranged for movers and begun packing.

Matters took a turn when approximately 10 days before the tenancy was to begin, a Realtor, acting as a friend of the landlords, advised the tenants that a change in circumstance arose that prevented the landlords from offering the tenancy as a fixed term agreement.

The rental unit is on leasehold property and the landlords had been awaiting confirmation of a new leasehold agreement and rate for approximately two years. The agreement had come forward and it now permitted the landlords to offer the rental building for sale as was their primary goal.

The friend had told the tenants that a full year binding agreement was no longer possible, but he believed the landlords might consider a six month commitment with a three-month notice clause.

At that news, the tenants repudiated the rental agreement and were able to reinstate their existing tenancy. The landlords were able to find new tenants for March 8, 2010.

The landlord stated that he had remained willing to negotiate and was surprised that the tenants had refused to proceed with the tenancy. The tenants stated they felt they had no choice as they were so close to the end date of their existing tenancy and had to act quickly to ensure that tenancy remained available.

The realtor/friend of the landlord stated that he had been quite clear in advising the tenants that a one-year term was no longer available.

Analysis

I find that by the landlords requesting and the tenants sending a security deposit, a tenancy was created, although the agreement had not been signed by the landlords.

I further find that by offering, then recanting the offer of a fixed term agreement, the landlords had innocently misrepresented a material and fundamental term of the agreement.

While the tenants had relied on that misrepresentation to the point of giving notice to their current landlord, planning the move and beginning packing, they were fortunately able to mitigate their loss by extending their current tenancy.

Therefore, I find that the tenants are entitled to an award of \$500 compensation for general damages arising from the landlords' breach of contract plus \$50 in recovery of the filing fee for this proceeding.

Conclusion

The tenants' copy of this decision is accompanied by a Monetary Order for \$550, enforceable through the Provincial Court of British Columbia, for service on the landlords.

During the course of the hearing, the parties advised that the landlords had not yet returned the tenants' deposits and rent cheques, and I hereby order that they do so without delay.

March 22, 2010