

DECISION

Dispute Codes

For the tenant – CNL, MNDC, OPT, RR, FF, O

For the landlord – OPB, FF

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenants and one brought by the landlord. Both files were heard together. The tenants have requested to cancel the Two Month Notice to End Tenancy for landlords' use of the property, for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulation or tenancy agreement. The tenants also request an Order of Possession of the rental unit, an Order to allow them to reduce their rent for repairs, services or facilities agreed upon but not provided, other issues and to recover their filing fee. The landlord seeks an Order of Possession because the tenants breached an agreement with the landlord and also seeks to recover her filing fee.

Both Parties confirm receipt of a copy of the other Parties Application, Notice of Hearing and evidence. I find that both parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing. The first hearing was adjourned to allow more time to hear the evidence. This hearing was reconvened on today's date.

One of the tenants appeared and was represented by her legal counsel. The landlord appeared with her agent and was represented by her legal counsel. Both Parties 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 to be Decided

- Are the tenants entitled to cancel the Notice to End Tenancy?
- Are the tenants entitled to a Monetary Order for money owed or compensation to the equivalent of one months' rent for the Two Month Notice to End Tenancy?
- Are the tenants entitled to an Order of Possession?
- Are the tenants entitled to reduce rent for repairs, services or facilities agreed upon but not provided?
- Is the landlord entitled to an Order of Possession because the tenants have breached an agreement with the landlord?

Background and Evidence

This tenancy started on February 01, 2009. Rent for this unit was \$2,600.00 per month which is due on the first of each month. This is a fixed term tenancy for one year and was due to expire on January 31, 2010. The tenants paid a security deposit of \$1,300.00 on January 20, 2009.

At the reconvened hearing held on this date the legal counsel for both Parties stated that they had reached an agreement in most aspects of their respective claims. The Parties did not require me to make a decision in these matters but required me to record the agreement they mutually reached.

This agreement is as follows:

- The landlord will pay \$1,000.00 to the tenants in compensation for repairs made to the property by the tenants.
- The security deposit of \$1,300.00 will be returned to the tenants on May 31, 2010
- The tenants will vacate the rental property on May 21, 2010.

As both Parties have reached an agreement on the majority of their claim as detailed above they have asked me to make a decision on one final point of their claim.

The tenants seek the equivalent of one months' rent in compensation for the Two Month Notice to End Tenancy given under section 49 of the Act pursuant to section 51 of the *Act*. The tenants argue that by issuing the Two Month Notice to take effect on February 28, 2010 the landlord extended the tenancy until this date.

The landlord argues that the tenants should uphold the fixed term tenancy agreement which states that the tenancy will end at the end of the fixed term of January 31, 2010. The landlord states the tenant was notified in writing that the tenancy agreement would not continue after the end of the fixed term and the rent increase notice issued on October 31, 2009 was cancelled. The landlord argues that she was unaware that she could have enforced the fixed term agreement and did not have to issue a Two Month Notice to End Tenancy.

Analysis

I have considered both arguments in this matter; I find that the landlord and tenants did enter into a fixed term tenancy starting on February 01, 2009. The tenancy agreement does state that this is a fixed term tenancy and at the end of the fixed term the tenancy will end and with the mutual consent of all parties to this agreement will continue on a month to month basis.

The landlord chose not to continue the tenancy and notified the tenants of this as she wished to use the rental unit for her daughters' residence. As the tenant did sign the tenancy agreement and does confirm that she was notified that the landlord would not be continuing the tenancy, it is my decision that the Two Month Notice issued has no effect and the tenancy agreement takes precedence in this matter. Consequently, I find the tenants are not entitled to receive the equivalent of one months' rent in compensation from the landlord and this section of their claim is dismissed.

Conclusion

Both Parties have reached an agreement before the hearing on most aspects of their respective claims and this agreement has been recorded by the Dispute Resolution Officer pursuant to section 62 of the *Act*.

The unresolved section of the tenants claim concerning money owed or compensation for the Two Month Notice to End Tenancy is dismissed 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: May 17, 2010.

Dispute Resolution Officer