



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNDC and FF

Introduction

This hearing was in response to an Application for Dispute Resolution, in which the Tenants applied for a monetary Order for money owed or compensation for damage or loss and to recover the filing fee from the Landlord for the cost of filing this application.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

The issue to be decided is whether the Tenants are entitled to compensation for expenses and damages that resulted from the end of this tenancy.

Background and Evidence

The Landlord and the Tenants agree that they entered into a fixed term tenancy that began on February 21, 2009 and ended on February 21, 2010, at which time the tenancy would revert to a month-to-month tenancy agreement. The parties agree that the Tenants were required to pay monthly rent of \$1,800.00 on the first day of each month.

The Landlord contends that when she entered into the tenancy agreement she did not understand that her Strata Corporation did not allow her to rent out the premises. The Tenants contend that the Landlord had an obligation to ensure that she had the right to enter into a tenancy agreement.

The Tenants contend that prior to entering into the tenancy agreement they clearly advised the Landlord that they were interested in a long term tenancy. The female

Tenant stated that she told the Landlord that they wanted to reside in the rental unit for a minimum of two years. The Landlord stated that she does not recall being told that the Tenants wished to reside in the unit for two years, although she understood they wanted a long term tenancy. The female Landlord stated that they did not attempt to enter into a fixed term tenancy that was longer than one year, because they did not believe it was necessary.

The Landlord stated that at some point during this tenancy she became aware that the Strata Corporation prevented her from renting out the premises and that she would be subject to fines for contravening the Strata Corporation bylaws. She stated that for personal financial reasons she decided that she needed to sell the rental unit and that she advised the Tenants of her intent to sell the unit in January of 2010.

The Tenants stated that the rental unit was being shown to prospective purchasers during the latter portion of their tenancy and they realized that they would have to move once the rental unit was sold so they entered into a mutual agreement to end this tenancy on April 04, 2010.

The Landlord and the Tenants agree that this tenancy ended on April 04, 2010 on the basis of a mutual agreement to end the tenancy. The parties agree that one of the terms of the mutual agreement to end the tenancy was that the Tenants would not have to pay rent for March of 2010.

The Tenants contend that they would not have entered into this tenancy agreement if they were aware that the Strata Corporation did not permit tenancies and that the Landlord misrepresented her right to enter into a tenancy agreement.

Analysis

I find that the Landlord and the Tenants entered into a fixed term tenancy agreement that ended on February 21, 2010 and that it continued after that time on a month-to-month basis. The *Residential Tenancy Act (Act)* defines a tenancy agreement as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a license to occupy a rental unit. I am unaware of anything in the *Act* that prevents a property owner from renting out a rental unit even when rentals are prohibited by strata corporation bylaws.

Residential Tenancy Policy Guideline #20 suggests that a contract made in violation of a federal or provincial statute is void and unenforceable if the making of the contract is expressly or impliedly prohibited by the statute in question. I concur with this guideline.

Residential Tenancy Policy Guideline #20 further suggests that municipal bylaws are not statutes for the purposes of determining whether or not a contract is illegal and that a breach of a municipal bylaw does not render the contract illegal. I concur with this

guideline. I find that the same principle applies to a strata corporation bylaw. I find that a strata corporation bylaw that prohibits renting is not a statute for the purposes of determining whether this tenancy agreement is legal and enforceable.

I find that the Landlord and the Tenants were compelled to abide by the terms of the fixed term tenancy agreement, regardless of the Strata Corporation bylaw that prohibits rentals. I find that both parties complied with the terms of the fixed term tenancy agreement.

I accept that the Tenants wished to remain in the rental unit for an extended period. I note, however, that they only entered into a one year fixed term tenancy agreement; that they did not attempt to negotiate a longer term; and that they were only promised a tenancy of one year. Had the parties entered into a fixed term tenancy agreement for a longer term, the Landlord would have been obligated to comply with the terms of that agreement regardless of Strata Corporation bylaws.

I find that the Landlord and the Tenants were obligated to continue this tenancy on a month to month basis until it was ended in accordance with the *Act*. I find that this tenancy ended on April 04, 2010 by mutual consent, in accordance with section 44(c) of the *Act*.

I find that the Tenants were not compelled to enter into a mutual agreement to end this tenancy. The Tenants could have elected to remain in the rental unit until the rental unit sold, which could, potentially, have extended their tenancy for a significant period.

I find that the Landlord was not compelled to enter into a mutual agreement to end this tenancy. The Landlord could have elected to continue the rent the unit to the Tenants and to pay any fines that were subsequently imposed by the Strata Corporation.

The Tenants are seeking compensation, in the amount of \$12,500.00, which includes compensation for costs associated to moving; for the time they spent packing and unpacking their belongings; for time they spent finding a new home; for emotional damage; and for physical pain.

Conclusion

Section 67 of the *Act* authorizes me to order a landlord to pay compensation to a tenant only when damage or loss results from the landlord failing to comply with the *Act*, the Regulation or the tenancy agreement. As I have determined that the Landlord did have the right to enter into this tenancy agreement and I have been unable to conclude that the Landlord failed to comply with the *Act*, the Regulation or the tenancy agreement, I dismiss the Tenants' claim for compensation for damages related to the end of this tenancy.

I find that the tenants' application has been without merit and I therefore dismiss the

Tenants' claim to recover the cost of filing this Application for Dispute Resolution.

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*. I specifically note that I do not have authority to make decisions relating to the *Strata Property Act*.

Dated: September 22, 2010.

Dispute Resolution Officer