



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNR, OLC, RR, OPR, MNR, FF

Introduction

This hearing dealt with an application by the tenants for an order setting aside notices to end this tenancy, an order for the landlords to comply with the Act and an order permitting the tenants to reduce rent for services not provided. The landlords brought a cross-application for an order of possession and a monetary order.

The hearing started on September 1 but was adjourned to September 10 to permit the landlords opportunity to present further evidence.

Issues to be Decided

Should the notices to end tenancy be set aside?

Should the landlords be ordered to comply with the Act?

Should the tenants be permitted to reduce their rent?

Are the landlords entitled to an order of possession?

Are the landlords entitled to a monetary order?

Background and Evidence

The parties agreed that the tenants are obligated to pay \$1,800.00 per month in rent in advance on the 3rd day of each month. In each of the months of April, May and June the landlords received \$660.00 from the Ministry of Employment and Income Assistance (the “Ministry”) to be applied to the tenants’ rent. The tenants did not make any additional rental payments to the landlords until August 8.

The parties agreed that on July 7 the tenants were served with a notice to end tenancy for unpaid rent (the "Notice"). The Notice alleged that on June 3, the tenants owed \$2,230.00 in rent. The tenant testified that he disputed the Notice because it suggested that he was required to pay \$2,230.00 per month in rent when his rent is only \$1,800.00 per month. The landlords served 4 more notices to end tenancy for unpaid rent on July 20, one notice for each of April – July inclusive.

At the September 1 hearing the parties referred to an agreement signed on or about June 15, 2010 (the "Contract"). The tenant claimed that the Contract provided that the landlord would not proceed with an eviction. The landlord advised that that he believed the Contract did not fall within the jurisdiction of the Residential Tenancy Branch and had not submitted it for that reason. Based on the tenant's testimony regarding the nature of the Contract, it appeared that it was inextricably linked to the tenancy and could possibly estop the landlord from ending the tenancy. I adjourned the hearing and instructed the landlord to provide a copy of the Contract both to the Residential Tenancy Branch and to the tenant.

The landlords submitted a copy of the Contract and the tenant confirmed that this was the Contract to which he had referred on September 1. The Contract provided that the tenants would:

- pay rent for April – June inclusive to the landlord, although no specific date was set for full payment;
- vacate the rental unit before July 1, 2010;
- pay the landlords \$15,000.00 for "pain, suffering, time and loss of revenue" no later than July 5;
- pay the landlords an additional \$5,000.00 if he would permit them to remain in the unit until August 1, 2010; and
- forfeit their security deposit if at least 25% of the \$5,400.00 in rent owing for April – June was not paid by August 1.

The parties agreed that the landlord S.D. drafted the Contract. The tenant testified that he had verbally promised the landlords that he would pay them \$20,000.00 if the landlords agreed to "work with him" and not evict him due to non-payment of rent. The tenant testified that he did not read the Contract prior to signing it and did not realize

that it required him to pay the landlords in addition to vacating the rental unit. The landlord testified that the Contract accurately represented the oral agreement made by the parties.

Analysis

I find that the Contract in no way estops the landlords from proceeding with an eviction. Although I required the landlords to produce this evidence, I did so on the strength of the tenant's testimony that the Contract would show that the landlords had agreed not to proceed with an eviction. Having reviewed the document, it is clear that the landlords did not make such an agreement.

Although the July 7 Notice does not accurately represent the amount owing at that point in time, I find that the amount owing was considerably more than what was listed on the Notice and I find that the tenants knew or should have known that they owed at least \$2,230.00 to the landlord on June 6. In a decision dated June 14, 2010 arising from a previous hearing, the tenants were ordered to pay \$3,650.00 in unpaid rent. The tenants clearly knew that they were significantly in arrears. Pursuant to section 46(4) of the Act, in order to cancel the Notice the tenants would have had to pay \$2,230 to the landlord no later than July 12, which is 5 days from the time they received the Notice. Even if I credit the \$1,980.00 paid by the Ministry, the tenants would still have owed \$250.00 to the landlord. The tenants did not fully satisfy the arrears until August 8 when the landlord accepted payment for use and occupancy only. I find that the landlord is entitled to an order of possession. As the landlord has also accepted rent for the month of September for use and occupancy, the order of possession cannot be effective until October 2, the end of the period for which rent has been paid. I grant the landlord an order of possession effective on October 2, 2010. This order must be served on the tenants. If the tenants fail to comply with the order, it may be filed in the Supreme Court and enforced as an order of that Court.

As the tenancy will be ending, it is unnecessary to address the tenants' claims for an order that the landlord comply with the Act and an order permitting the tenants to reduce their rent. The tenants' application is dismissed in its entirety.

The landlords originally applied for a monetary order to recover the rental arrears. At the hearing the parties agreed that there was no outstanding rent owing. The landlords amended their claim to include a claim for the \$20,000.00 promised in the Contract. I find that the Contract is inextricably linked to the tenancy and on that basis accept jurisdiction over the Contract. The Act defines "tenancy agreement" as follows:

"tenancy agreement" means 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 licence to occupy a rental unit;

I find that the Contract is part of the tenancy agreement as it specifically addresses possession of the rental unit. Section 6(3)(b) of the Act provides as follows:

6(3) A term of a tenancy agreement is not enforceable if

6(3)(b) the term is unconscionable,

Section 3 of the Regulation provides as follows:

3 For the purposes of section 6 (3) (b) of the Act [*unenforceable term*], a term of a tenancy agreement is "unconscionable" if the term is oppressive or grossly unfair to one party.

I find that the \$20,000.00 payment which is the subject of the Contract is oppressive and grossly unfair to the tenants. Regardless of whether the tenants agreed to make this payment, I find that a promise to pay the equivalent of almost one year's rent in order to forestall an eviction is far beyond what might be considered reasonable. For this reason I find that the term is not enforceable pursuant to section 6(3)(b) of the Act. The landlords' monetary claim is dismissed. The landlords had originally checked the box indicating they wished to recover the filing fee, but crossed out and initialled the mark. I therefore make no award respecting the filing fee.

Conclusion

The landlords are granted an order of possession effective October 2, 2010. The landlords' monetary claim is dismissed. The tenants' claim is dismissed in its entirety.

Dated: September 10, 2010

Dispute Resolution Officer