



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNL, MNR, MNSD, OLC, AS, O, FF

Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution, seeking an order to cancel a Notice to End Tenancy for the Landlord's use of the rental unit, and orders for the costs of emergency repairs, return of the security deposit, an order for the Landlord to comply with the Act or tenancy agreement, to allow the Tenants to assign or sublet the rental unit and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues(s) to be Decided

Are the Tenants entitled to the relief sought?

Background and Evidence

On October 13, 2010, the Landlord issued the Tenants a two month Notice to End Tenancy for the Landlord's use of the rental unit, to be effective on December 31, 2010. The evidence of the Landlord is that her daughter is moving into the rental unit and a tenancy agreement in this form was provided in evidence.

The Tenants allege that the Landlord is simply trying to end the tenancy because the Tenants made complaints to the Landlord regarding the drinking water and odour from the septic system.

Nevertheless, the Tenants gave the Landlord a 15 day Notice to End Tenancy which was to be effective on November 15, 2010, under section 50 of the Act and vacated the rental unit on November 6, 2010. An outgoing condition inspection report was completed and the Landlord refunded the Tenants the security deposit. However, the Landlord gave the Tenants a post dated cheque for the one month of compensation under section 51 of the Act, to be valid on December 31, 2010.

The Tenants say they were intimidated by the Landlord and wanted to end the tenancy. They paid no rent for November of 2010.

During the course of the hearing, the Landlord agreed to re-date the cheque for compensation to the Tenants to today's date, and the Tenants agreed they would return the post dated cheque to the legal counsel for the Landlord. As the Tenants were required to pay rent for ½ of November of 2010, the parties agreed that the Landlord would deduct this from the one month compensation owed and pay the Tenants the balance of \$850.00 today, and the Tenants would be able to receive this cheque at the office for the legal counsel of the Landlord.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find that the Tenants' Application should be dismissed, as it is no longer relevant to these circumstances. The Tenants gave Notice to end the tenancy and therefore, the Notice to End Tenancy does not have to be cancelled.

The Tenants were informed of section 51 of the Act, which might provide compensation to them if the Landlord does not use the rental unit as was indicated in the Notice to End Tenancy.

The parties have agreed that the Landlord shall pay the Tenants \$850.00 in compensation for the one month required under section 51, which takes into account the Tenants owing the Landlord \$850.00 for half of November's rent, pursuant to section 50 of the Act.

I note the Landlord had reimbursed the Tenants for the cost of emergency repairs prior to the hearing.

As to the Tenants' claim that the Landlord refused to allow them to assign or sublet the rental unit, the Tenants explained that they included this in their claim, since the Landlord did not allow them to have an additional occupant in the rental unit.

It was explained to the Tenants that to deny an additional occupant is not a refusal of a sublet or assignment, as the Tenants would still be occupying the rental unit. An assignment or sublet of the rental unit is required when the Tenants want to vacate the rental unit and rent to another party (sublet) or be excused from the performance of the tenancy agreement and have someone else become the responsible tenant (assignment). This was not the case here, and therefore, the Tenants had no claim under this portion of the Act.

Lastly, as much of the Tenants' Application was unnecessary, I make no award for the filing fee for the 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: November 15, 2010.

Dispute Resolution Officer