

Decision

Dispute Codes:

OLC, OPT, PSF, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to order that the landlord comply with the Act in regards to the tenancy agreement between the parties and compensate the tenant for damages that occurred due to noncompliance by the landlord. Both parties appeared and gave testimony.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence are:

- Whether the tenant is entitled to possession of the rental unit as of January 1, 2011.
- Whether or not the landlord is in violation of the Act and should therefore be ordered to comply.
- Whether the tenant is entitled to monetary compensation for damages arising from the landlord's violation of the Act.

The burden of proof is on the applicant/tenant.

Background and Evidence

The tenant testified that they had entered into a one-year fixed term tenancy agreement that was to begin on January 1, 2011 with rent set at \$2,150.00 and the tenant paid a security deposit of \$1,075.00 and gave post-dated cheques for rent. However, after the agreement was made, the landlord advised the tenant that the tenancy would not proceed due to the premises being sold. The tenant testified that they did not agree with the landlord's position as it violated the Act and agreement. However the tenant found it necessary to extend the existing tenancy for a month to permit time to make a legal challenge against the landlord on this issue, or to find another place to move to. The tenant stated that the landlord had since relented and agreed to fulfill the contract to permit the tenant to move into the rental unit as agreed. The tenant is now seeking compensation for \$1,240.00 representing the one-month financial commitment made to the tenant's current landlord.

The landlord concurred with the tenant's testimony that there was an attempt to end the tenancy due to a sale of the premises and that this was no longer an issue as the tenant was permitted to start the tenancy according to the contract signed. The landlord disputed the tenant's claim that compensation was owed to the current landlord for an extension arranged for the tenant to stay until January 31, 2011 on the basis that the tenant had not served the landlord with evidence to confirm this was a valid claim.

Analysis

In regards to an Applicant's right to claim damages from another party, Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

I find that in order to justify payment of damages under section 67, the Applicant would be required to prove that the other party did not comply with the Act and that this non-compliance resulted in costs or losses to the Applicant, pursuant to section 7.

Section 16 of the Act states that the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

I find that both parties were legally bound to fulfill the tenancy agreement as of the date they made the commitment to do so. I find that the landlord's attempt to terminate the agreement prematurely was clearly in violation of both the Act and the agreement. In fact, this tenancy cannot be ended for the landlord's use during the fixed term which will end on December 31, 2011. Therefore I find that the landlord is liable for damages that stem from this violation

I find the tenant is entitled to a one-time lump-sum rent abatement of \$1,290.00 comprised of \$1,240.00 loss for rent that must be paid to the previous landlord for January 2011 and the \$50.00 cost of this application. Accordingly, I find that the tenant will only owe the landlord \$860.00 rent for the month of January 2011, after which the rent will be \$2,150.00 per month for the remainder of the fixed term

Conclusion

Based on the evidence, I hereby order that the landlord must credit the tenant with \$1,290.00 towards the \$2,150.00 rent normally owed for January 2011. The landlord must return the tenant's cheque for January and permit the tenant to reissue a rent cheque for \$860.00 as payment in full for January 2011 rent.

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: December 2010.

Dispute Resolution Officer