Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes: CNR, OLC, RP, RPP, OPR, MNR, MNDC, FF

Introduction

This hearing dealt with an application by the tenants for a number of orders and a cross-application by the landlords for an order of possession and a monetary order. The hearing was originally convened on November 12 at which time the parties agreed that the landlords were entitled to an order of possession and that the tenants were entitled to be granted access to a shed to retrieve their personal belongings. The parties agreed to adjourn the hearing to permit the tenants opportunity to retrieve and inventory their belongings. The hearing was reconvened on December 8 to address the landlords' monetary claim. Although in my interim decision of November 12 I had kept alive the tenants' claim for the return of their property, at the December 8 hearing the tenants confirmed that they had been able to retrieve their property and no longer required the order originally sought. I consider that claim to have been withdrawn.

The landlords requested an adjournment to permit them opportunity to bring an additional claim against the tenants. I denied the request for an adjournment on the basis that the proposed claim was distinct from the monetary claim which was before me and there was no reason why the current claim could not be heard on December 8.

Issue to be Decided

Are the landlords entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenants were obligated to pay $1,400.00 in rent each month.

The landlords claim that the tenants failed to pay rent in the months of August, October and November.

The tenants testified that in August they had a conversation with the landlords in which the parties agreed that the tenants would perform repairs to the deck and stairs and would use the rent money for August to pay for materials. The tenants entered into evidence a letter dated August 27 which was sent to the landlords to confirm the agreement. The tenants performed repairs in the months in August and September and testified that they submitted receipts to the landlords and were told by the landlords that the entire rent for August would be forgiven to compensate them for their labour and the money they had spent on materials and the cost of a report to test for mould.

On October 5 and 6 air quality testing and moisture readings were taken in the unit. Upon receiving the results of that testing, the tenants determined that they could not continue to live in the rental as they felt it was unsafe and on October 9 they delivered to the landlord a letter advising that the landlords had failed to comply with a material term of the tenancy agreement agreement and giving the landlords 5 days from the date of that letter to remedy the problems listed on a report which included identification of air quality issues and excessive moisture readings. The letter indicated that the tenants intended to end their tenancy if the landlords failed to remedy the identified issues.

The tenants testified that they paid the landlord G.C. $700.00 in cash at the beginning of October. The tenants stated that the landlords did not issue receipts for cash payments. The tenants acknowledged that they did not pay any further rent in the month of October. The tenants further acknowledged that they did not pay rent in the month of November but argued that they did not live in the rental unit during the month of November except to wait to retrieve their belongings from the shed.

The landlords were represented at the hearing by their daughter-in-law, M.C., who testified that the landlords have a limited ability to communicate in English and minimal education. M.C. testified that in the month of August the landlords agreed that the tenants could replace worn boards in the deck using materials at the rental unit and that

they were still expected to pay full rent in that month. M.C. denied that the landlords had agreed that the tenants could repair the deck in lieu of rent and stated that when the landlords had received the letter dated August 27 they did not understand its significance due to their limited capability in English. M.C. testified that because the deck was built without permits, the municipality has contacted them and required them to either bring the deck up to code or remove it, which she anticipates will be costly.

M.C. denied that the landlords had received any cash from the tenants in October and stated that the landlords did not issue receipts because the tenants did not ask for them.

M.C. testified that she had seen the tenants' or their vehicles at the rental unit each day in November until the order of possession obtained in the November 12 hearing became effective on November 17.

Analysis

In the normal course of a tenancy, one would expect to see documentation of significant events. The Residential Tenancy Act requires the landlord to put a tenancy agreement in writing, but in this case no written tenancy agreement appears to exist. The Act also requires landlords to give written receipts for cash payments regardless of whether tenants request such receipts, but the landlords did not issue receipts. One would also expect to see an agreement whereby labour was performed in lieu of rent to be in writing, but no such document exists.

The tenants bear the burden of proving that rent for the month of August was forgiven in exchange for their labour, the cost of deck materials and the cost of the aforementioned reports. I find that given the circumstances of this tenancy in which the landlords did not document events in writing, I cannot expect the tenants to provide a written agreement. The circumstances surrounding the building of the deck have persuaded me that it is more likely than not that the parties did enter into the agreement claimed by the tenants. Although the landlords are uneducated and claim to have limited skills in English, they were able to clearly communicate essential terms of the tenancy at the outset of the tenancy and appear to have been able to communicate about rent payments throughout

the tenancy, including the means by which rent would be paid. Upon receiving the letter of August 27 the landlords did not seek the assistance of M.C. nor did they confront the tenants, which one would expect to occur if they did not understand the letter or did not agree with it. The tenants paid their rent in full in the month of September and the landlords appear to have not made any request for outstanding rent and did not apply September's rental payment to arrears, although this would be the usual accounting procedure. The landlords did not deny that they viewed the deck in September as was claimed by the tenants and they did not allege to have made an objection at that time, which one would have expected had they objected to the deck. In fact, no objection whatsoever was expressed until the tenants presented the air quality and moisture content reports to the landlords together with their letter of October 9 which demanded that they address repairs by a certain deadline. It was only at this point that the landlords were sufficiently concerned to seek M.C.'s assistance.

I find it more likely than not that the landlords were sufficiently able to understand the letter of August 27, that they knew it represented the agreement they had with the tenants and that they did not confront the tenants about the lack of a rent payment or about the building of the deck because they had agreed to it. I further find that the landlords were able to comprehend the October 9 letter sufficiently to cause them to seek M.C.'s assistance, at which time M.C. formed the opinion that the agreement the landlords had made with the tenants regarding rent in lieu of labour was unsatisfactory.

I find that the landlords agreed to waive August rent in exchange for the tenants' labour, the cost of deck materials and the cost of the air quality and moisture content reports and I dismiss the landlords' claim for rent for August.

By failing to issue written receipts pursuant to their statutory obligation, the landlords have deprived the tenants of the opportunity to prove that they made cash payments. I find that the landlords have failed to prove that the tenants did not make a $700.00 cash payment in the month of October. I find that the tenants were obligated to pay $1,400.00 in rent for that month and failed to pay $700.00 of their rent and I award the landlords $700.00. Although the letter of October 9 indicated that the tenants intended

to terminate their tenancy pursuant to section 45(3) on the basis that the landlord had failed to comply with a material term of the tenancy agreement and had failed to correct the situation within a reasonable period after having received written notice of the failure, the tenants did not follow through on that intention and did not give the landlord written notice that they were in fact ending the tenancy.

Regardless of whether they resided in the rental unit from November 1-17, the tenants bore a contractual obligation to pay rent for that period. M.C. stated that she was willing to claim rent only for the period from November 1-17 as the parties had mutually agreed to end the tenancy on November 17. I award the landlords $793.33 which is pro-rated rent for November 1-17.

I find that the landlords are entitled to recover the filing fee paid to bring their application and I award them $50.00.

Conclusion

The landlords are awarded $1,543.33 which represents $700.00 in rent for October, $793.33 in rent for November and $50.00 for the filing fee. I grant the landlords a monetary order under section 67 for $1,543.33. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Dated: December 10, 2010

Dispute Resolution Officer