



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPB, MNDC, FF

Introduction

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

This is a request for an order possession and request for a monetary order for \$4600.00. The applicant is also requesting that the respondent bear the \$50.00 cost of the filing fee that was paid for the application for dispute resolution.

A portion of this application is a request for an order for the tenants to pay for utilities; however the landlord filed a claim for the utilities in a previous application for dispute resolution and a hearing was held on November 29, 2010, and in the decision from the dispute resolution officer the claim for utilities a was **dismissed without leave to reapply**, and therefore I am not able to re-hear this matter.

I will therefore only be dealing with the landlords request for an Order of Possession, the request for an order for \$3400.00 rent, and a request for the filing fee.

Background and Evidence

The applicant testified that:

- On September 1, 2008 the respondents signed a one-year fixed term tenancy agreement with an expiry date of August 31, 2009.
- Clause 17 of that agreement states “the tenants will have to leave on August 31, 2009 unless another written lease agreement is entered into by July 5, 2009”.
- No new tenancy agreement was ever completed and therefore the tenants should have vacated pursuant to the September 1, 2008 agreement.
- The tenants have refused to vacate the rental unit and therefore the landlord is asking for an Order of Possession for January 31, 2011.
- Since he believed the tenants were supposed to vacate the rental unit, he advertised it for rent at \$2000.00 per month and he had a lot of interest in the rental unit and therefore believes he could have re-rented it for \$2000.00 per month.
- Therefore since the tenants failed to vacate when they were supposed to, he believes they should be liable for the full \$2000.00 per month he believes he would have re-rented the unit for.
- The tenants have only paid \$1800.00 per month and therefore he is asking for an extra \$200.00 per month for the past 14 months for a total of \$3400.00.

The respondents testified that:

- The landlord had presented them with a new fixed term tenancy agreement however before they had a chance to sign it and before the landlord signed it the landlord decided he no longer wished to enter into a tenancy agreement with them.
- They had wanted to attach a letter to the tenancy agreement stating their disagreement with all the clauses in the agreement that did not comply with the Residential Tenancy Act however the landlord was unhappy with that request and therefore decided not to enter into a new agreement with them, and wanted them to vacate by August 31, 2009.
- They believe that since they were fully willing to enter into the new fixed term agreement and it was the landlord that did not want to proceed with the new tenancy agreement, this tenancy should revert to a month-to-month tenancy.

- They therefore refused to vacate the rental unit and have continued to pay \$1800.00 per month, as per the previous agreement.
- They also do not believe that the landlord should be allowed an extra \$200.00 per month, because there is no evidence to prove that he could have received that much money for the rent.
- Even in the tenancy agreement presented to them by the landlord, which was never signed, the landlord had set the monthly rent at \$1800.00 per month.

Analysis

If, before an agreement is signed, one party to a proposed agreement decides they no longer want to proceed with the agreement and refused to sign the agreement, then no agreement has been finalized.

Therefore in this case since the landlord decided he no longer wanted to proceed with agreement and did not sign it the agreement does not come into effect.

Failing to come to an agreement on a new fixed term tenancy however does not mean that this tenancy reverts to a month-to-month tenancy, because the previous fixed term tenancy stated "the tenants will have to leave on August 31, 2009 unless another written lease agreement is entered into by July 5, 2009".

Therefore the tenants did not have the right to continue living in the rental unit past the end of August 31, 2009, and since they failed to vacate on that date the landlord does have the right to an Order of Possession for January 31, 2011.

It is my decision however that the landlord has not met the burden of proving that he could have rented this unit for \$2000.00 per month had the tenants vacated. The landlord advertised at \$2000.00 per month and claims that he had a lot of interest in the rental unit; however he has supplied no evidence to show that there were people willing to pay \$2000.00 per month for this rental unit.

Therefore I will not allow the landlords claim for \$3400.00 in lost rental revenue.

It is my decision however that the tenants must bear the \$50.00 cost of the filing fee that the landlord paid for the application for dispute resolution.

At the end of the hearing the tenants requested an extra month, and therefore the landlord offered to allow the tenants to stay in the rental unit until the end of February 2011, as long as they pay \$2000.00 for use and occupancy for the month of February 2011. The tenants agreed to this offer.

Conclusion

In lieu of above agreement I have issued an Order of Possession for 1 p.m. on February 28, 2011 and have ordered that the tenants pay the \$50.00 filing fee to the landlord.

The applicant's \$3400.00 monetary claim for lost rental revenue is dismissed in full without leave to reapply.

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: January 14, 2011.

Residential Tenancy Branch