



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNR, MNDC, FF

Introduction

This matter dealt with an application by the landlord to obtain a Monetary Order for Unpaid Rent, a Monetary Order for money owed or compensation for loss or damage under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement, and to recover the filing fee for this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was sent by registered mail to the tenants on December 03, 2010. The tenants confirmed receipt of the hearing documents.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Both parties agree that this tenancy started on July 01, 2008 and ended on March 31, 2011, although the tenants did vacate the rental unit earlier. Rent for this property was \$2,000.00 per month due on the first of each month.

The landlord testifies that he served the tenants with a typed two month notice to end tenancy because he had sold the house and his purchasers of the house wanted him to give notice to the tenants as they would be moving into the house. The landlord testifies he gave the tenants a typed Notice to end their tenancy on February 24, 2011 and both Parties signed this letter. The landlord states the tenants were concerned about this so he told them he would look into it further and to disregard the Notice given to them. The landlord states he contacted his realtor who later told him the purchasers intended to tear the house down. He states he was sent an addendum to the purchase agreement stating "The buyer hereby requests the seller to give notice to the tenant to vacate the premise because the buyer is going to demolish the property after taking possession." He states he contacted the tenants and told them again to disregard the typed notice he had given them.

The landlord testifies he then contacted the Residential Tenancy Branch and was told the Notice he had given the tenants was not valid because it was not on a valid form and as the house was to be demolished the new owners would have to give notice to the tenants. The landlord testifies the tenants then gave him Notice to end their tenancy effective on March 31, 2011 which also stated they were withholding rent for March as this was their compensation due to them because of the Two Month Notice. The landlord argues as he had told the tenants to disregard the Notice as the notice was invalid and as the tenants did not give him proper notice to end tenancy as it was given on March 01, 2011; the landlord therefore seeks to recover unpaid rent for March and April, 2011.

The tenants testify that the landlord gave this typed notice to end tenancy for April 30, 2011 and stated on this letter that all the conditions for sale of the unit have been satisfied and the purchaser has asked the landlord to give notice. The tenants state they signed this letter with the landlord to accept this as their notice to end the tenancy.

The Tenants state that they acted on the Notice in good faith and that, although the Notice was not in the approved form, it had all the necessary information on it, for example the date the Notice was issued; the address of the rental unit; the names of the parties; the effective date of the end of the tenancy and the reason given to end the tenancy.

The tenant's testify that the landlord did not tell them straight away to disregard the notice and they acted immediately upon receiving the notice to find alternative accommodation. The tenants state they then gave the landlord a letter notifying him that they would be moving from the rental unit on March 31, 2011 due to his Two Month Notice and they would be withholding rent for March in Compensation for this Notice.

The tenants state they filed an application for compensation and a hearing was held on October 21, 2010. In this hearing it was agreed that the tenants were compensated by not paying the last month's rent and their application for further compensation was dismissed. The tenants also refer to the previous decision that states " The Seller stated that by the time he had discovered that the Notice was not a valid Notice, the Tenants had given their notice that they were moving out of the rental unit early, so he "let it go". The tenants state they did not dispute the Notice as they agreed with the landlord by signing the two month typed letter he gave them that the tenancy would end and they acted in good faith that the landlords notice was valid when they withheld their rent and gave him more than the 10 days required notice under s. 51(a) of the *Act*.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. I have also reviewed the previous decision rendered for the tenant's application. In that decision it was deemed that the Two Month Notice was invalid as it was not on an approved form. The landlord argues as the Notice was invalid the tenants would not have been entitled to their last month's rent in compensation and as they gave improper notice to end the tenancy he should be entitled to recover rent for March and April, 2011 to the sum of \$4,000.00.

However as the tenants accepted the Notice in good faith and both parties signed the letter agreeing to end the tenancy due to this notice and as this invalid notice contained all the relevant information that is required under s.52 of the Act. I find that the tenants were entitled to withhold rent for March, 2011 and gave the landlord notice to end tenancy under s. 51(a) of the Act.

It is my decision that it would be unreasonable for the landlord to give a tenant a Notice to End Tenancy whether it is a valid or invalid document and then retract that notice when the tenants accepted the notice and acted on the notice in finding alternative accommodation.

Consequently the landlords' application to recover unpaid rent for March, 2011 and a loss of income for April, 2011 is dismissed.

As the landlord has been unsuccessful with his application he must bear his own filing costs.

Conclusion

The landlords' application is dismissed in its entirety 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: April 11, 2011.

Residential Tenancy Branch