



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPT, OLC, FF

Introduction

This matter dealt with an application by the Tenants for an Order that the Landlord comply with the Act or tenancy agreement, for an Order of Possession and to recover the filing fee for this proceeding.

The Tenants said they served the Landlord with the Application, Notice of Hearing and evidence package (the "hearing package") by registered mail on March 23, 2011. The Tenants said they received an e-mail from the Landlord's daughter (who is acting as his agent) on March 24, 2011 acknowledging receipt of the Notice of this registered mail, however she advised them that the Landlord would not be picking it up. Section 90(c) of the Act says that a document delivered by mail is deemed to be received by the recipient 5 days later. Therefore, based on the evidence of the Tenants, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded in the Landlord's absence.

Issue(s) to be Decided

1. Are the Tenants entitled to an Order of Possession?

Background and Evidence

The Tenants said they received a copy of a Residential Tenancy Branch form of a tenancy agreement from the Landlord's agent on March 20, 2011 at 8:37 p.m. by e-mail which contained all of the terms and was signed by the Landlord on the last page. The Landlord's agent asked the Tenants to sign the agreement and return it to her by fax or e-mail. The Tenants said they sent a return e-mail to the Landlord's agent at 9:23 p.m. on March 20, 2011 acknowledging receipt of the tenancy agreement and they also advised the Landlord's agent that they would sign it and return it. In the same e-mail the Tenants asked for answers to some questions about tenant's insurance and the general state of repair and maintenance of the property. The Tenants claimed they signed the tenancy agreement that evening but did not return it at that time to the Landlord.

The Tenants said the following morning, they found an e-mail from the Landlord's agent which was sent at 11:55 p.m. on March 20, 2011 that said, "my parents decided not to rent the house to you and are willing to revoke the tenancy agreement." The Tenants said they sent the fully executed copy of the tenancy agreement to the Landlord by e-mail on March 22, 2011 and another copy in the hearing package by registered mail on March 23, 2011.

The copy of the tenancy agreement provided by the Tenants as evidence at the hearing indicates that it was for a month-to-month tenancy commencing on May 1, 2011 at a rental rate of \$1,300.00 per month. The Tenants said they sent the Landlord a cheque in payment of the security deposit and pet damage deposit in their hearing package with the executed copy of the tenancy agreement. The Tenants said the rental unit is currently occupied by tenants who are supposed to be moving out at the end of April 2011. The Tenants argued that the Landlord has not given them a reason for wanting to revoke the tenancy agreement. The Tenants also claim they gave their notice to end their current tenancy and are unable to find other rental accommodations in the community where the rental unit is located.

Analysis

It is a principle of common law that in order for there to be a binding contract, an offer must be accepted and the acceptance of the offer must be communicated to the person making the offer (the "offeree"). It is also a principle of common law that a party cannot accept an offer once it has been withdrawn by the offeree.

The copies of the e-mail correspondence from the Landlord's agent indicate that it is the Landlord's position that the tenancy agreement is void because the Landlord revoked the tenancy agreement before the Tenants communicated their acceptance. The Tenants argue that they signed the tenancy agreement before the Landlord revoked it and therefore it is a binding tenancy agreement. The Tenants also argued that they communicated their acceptance of the agreement to the Landlord prior to the Landlord revoking his offer.

The Tenant's e-mail dated March 20, 2011 sent at 9:23 p.m. states (in part) "we received the tenancy agreement and *we will sign it and send it to you.*" Based on this correspondence, I find that the Tenants conveyed their ***intent to accept*** the offer, but they had not actually accepted the offer at that point or communicated to the Landlord that they had accepted the offer, nor did they comply with the Landlord's instructions to communicate their acceptance by returning to him a signed copy of the tenancy agreement. Consequently, I find that the Tenants did not communicate their acceptance of the tenancy agreement until March 22, 2011 (when they returned a signed copy of it by e-mail) after the Landlord had already revoked it. As a result, I find that there is no tenancy agreement and the Tenants' application to enforce it and for an Order of Possession are dismissed without leave to reapply.

Conclusion

The Tenants' application is dismissed 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 07, 2011.

Residential Tenancy Branch