



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's legal counsel and by the male tenant.

From the documentary evidence I note that there is a settlement conference set for January 30, 2012 at 9:30 a.m. to discuss compensation for the landlord for rent owed for the period April to July 2011 and compensation sought by the tenants related to damages and losses suffered from cancelling a right to purchase agreement.

Section 58(2) of the *Residential Tenancy Act (Act)* stipulates if the director receives an application, the director must determine the dispute unless, among other things, the dispute is linked substantially to a matter that is before the Supreme Court. As the settlement conference set for January 30, 2011 is through actions in the Provincial (Small Claims) Court, I accept to hear this Application.

Further, I stated to both parties at the outset of the hearing that I may consider reserving my decision until such time as the results of the settlement conference are available, however, based on the testimony and evidence provided by both parties, I see no reason to delay a decision on the matters of rent.

Issue(s) to be Decided

The issues to be decided are whether the parties entered into a tenancy agreement; the landlord is entitled to a monetary order for unpaid rent and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties entered into a Right to Purchase agreement on December 22, 2010 whereby the tenants would pay the landlord instalments of \$2,000.00 per month commencing on February 1, 2011 and continuing on the first day of every month thereafter until January 1, 2013.

The parties agree that in March 2011 the tenants informed the landlord that they had decided they wished to end the Right to Purchase agreement for a period of time until the landlord dealt with some issues for which the Canada Revenue Agency had a judgement against the landlord's property. The landlord agreed to let them out of the agreement.

The tenants paid the landlord the March 1, 2011 payment accordance with the Right to Purchase agreement, but have made no payments since and lived in the home until July 25, 2011. The parties confirm that on May 25, 2011 the tenants registered a release of the Right to Purchase at the local Land Titles offices.

Both parties relied on the text from a text message between the parties that is dated by the tenants as May 4, 2011 and by the landlord as 01/11. The message itself is part of a string of messages between the two parties submitted by the tenants that start on May 2, 2011 and end on May 25, 2011.

In a message dated May 3, 2011 at 15:06:05 the landlord states: "I would like for the contract to still stay as is:) resolutions on my end are projected to be sorted by sept. Or oct. This year, as my lawyer has assured me:) he gave me great advice for our proposal."

In the message dated May 4, 2011 by the tenants and noted above, the tenants speak about not paying the landlord for April and May and based on going back to the start of the purchase agreement if they changed the amount to \$1,600.00 per month then the tenants could pay the landlord \$2000.00 that would make them current for April and May. As of June 1, 2011 the amount would be \$1,600.00.

From the string of text messages on May 24, 2011 the landlord writes: "please email me today if u can the points in our meeting about ur proposal in regards to the townhouse. My lawyer would like it for review."

On June 9, 2011 the male tenant sent an email to the landlord stating that the tenants do not want to enter into a new right to purchase agreement until the landlord has resolved all of the outstanding debt issues. He continues by stating we would like stay in the unit and rent from you as long as we can, until a new purchase agreement is in place.

The landlord's legal counsel asserts this discussion amounts to an agreement to a rental amount that was agreed to by the tenants in this text. He submits the landlord followed up with a written tenancy agreement provided to the tenants by email on June 14, 2011.

The tenancy agreement provided to the tenants stated the tenancy started on April 1, 2011 as a month to month tenancy for a monthly rent of \$1,600.00 with a security deposit of \$800.00. There was no evidence before me that the tenants paid the security deposit.

The tenants provided an email response to the landlord dated June 15, 2011 stating that they understood from previous discussions that rent would begin as of August 1, 2011 not April 1, 2011. The tenant testified this was to be in lieu of all the fees and payments, lost taxes resulting from the ending of the right to purchase agreement.

There was additional correspondence between the tenants and the landlord's legal counsel between June 24, 2011 and July 4, 2011 with the tenants continuing to state the verbal agreement they had with the landlord included rent starting not before August 2011. The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent on July 5, 2011 stating the amount of unpaid rent was \$1,600.00.

Analysis

In order to determine if the landlord is entitled to any compensation for unpaid rent I must first determine if a tenancy existed between the parties. From the testimony and documentary evidence I find the parties operated under a right to purchase agreement from the date the agreement was entered into (as stipulated by both parties) until the release of the right to purchase was registered with Land Titles, May 25, 2011.

I find that, based on all the submitted correspondence, both parties appeared to be negotiating a new right to purchase agreement until the tenants clearly outlined in their email of June 9, 2011 that they did not want to enter into a new right to purchase agreement. Five days later the landlord sent them a tenancy agreement.

A tenancy agreement is defined in Section 1 of the *Act* as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit. A tenancy means a tenant's right to possession of a rental unit under a tenancy agreement.

While I accept the parties did not enter into a written tenancy agreement or that all of the terms of the tenancy had been agreed upon I do accept the tenants retained possession of the rental unit after the right to purchase agreement ended and that the parties had agreed to an amount of \$1,600.00 per month for compensation for the tenants to remain in the house to the landlord throughout their documented negotiates submitted into evidence. As such, I find there was an implied tenancy agreement in accordance with Section 1.

Further from the text message dated May 4, 2011 from the tenants it is clear to me that the tenants understood there was a debt to the landlord for at least the months of April, May and June 2011. I also note, despite the plethora of documented correspondence, there is no mention in any of the correspondence from either party of any verbal agreement regarding non-payment of compensation for the 4 months in question, until the tenant's response to the landlord's legal counsel's demand for rental payment on June 24, 2011.

As such, for the period of time including the months of April and May 2011, I find the *Act* does not apply and I decline jurisdiction. I accept that once this period was over the relationship between the parties changed from seller/purchase to landlord/tenant. I also find the tenants are responsible for the payment of rent in the amount of \$1,600.00 per month for the months of June and July 2011.

Conclusion

For the reasons above, I find the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$3,300.00** comprised of \$3,200.00 rent owed and the \$100.00 fee paid by the landlord for this application.

This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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 19, 2011.

Residential Tenancy Branch