



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, FF, CNR

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 decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together.

The tenant's application is a request to cancel a Notice to End Tenancy that was given for nonpayment of rent, a request to dispute an additional rent increase, and a request for an order for the landlord to comply with the Residential Tenancy Act. The tenants are also requesting recovery of their \$50.00 filing fee

The landlord's application is a request for an order of possession based on a Notice to End Tenancy for nonpayment rent, a request for a monetary order for \$1300.00, and a request for recovery of their \$50.00 filing fee.

Background and Evidence

The landlord testified that:

- As stated in the tenants employment contract, the market rent for this unit is \$1000.00 per month, however the tenants, while acting as resident managers, only have to pay \$500.00 per month, and they receive a \$500.00 taxable benefit.

- They are only entitled to be \$500.00 per month rental during the term of their employment.
- On September 6, 2012 the tenants gave notice that they were resigning, “effective immediately” and return the keys to the landlord.
- At this time they had paid no rent, however since they were no longer going to be managing the rental unit from September 6, 2012 on, they became liable for full market rent after that date.
- The market rent was therefore prorated for the remainder of September 2012 at \$800.00 for the month.
- Since the tenants had paid no rent, they were given a 10 day Notice to End Tenancy, however they subsequently paid \$500.00 and therefore there is still \$300.00 rent outstanding for the month of September 2012.
- To date the tenants have failed to return the keys to the rental unit and therefore they still do not have possession of the rental unit, and yet the tenants have paid no rent for the month of October 2012.
- They are also therefore asking for an order for the lost rental revenue for the month of October 2012 in the amount of \$1000.00.
- They are also requesting an Order of Possession for as soon as possible, so that they can regain possession of the rental unit.

The tenants testified that:

- They did not terminate their employment contract on September 6, 2012; they gave their 30 day notice on September 6, 2012 that they were resigning as managers. They were fully willing to continue working for that 30 day period.
- It was the landlord who terminated their employment contract on September 6, 2012 and insisted that they return the keys, telling them not to come back into work.
- Their employment contract allowed them to resign as managers on 30 days notice, and therefore they were completely within their rights under the terms of employment.
- Further, although the contract does state that the market rent is \$1000.00 per month, there is nothing in the contract that states that, if they give the proper 30 days notice of resignation, the rent will go back up to the market rent before those 30 days expire.
- They believe that since the rent was \$500.00 per month, raising the rent to \$1000.00 per month is an illegal rent increase.
- Further, they moved out of the rental unit at the end of September 2012, however they have not return the keys because they were waiting for the outcome of this hearing.

Analysis

It is my finding that the tenants are liable for the full market rent from September 7 to the end of the month.

The tenants claim that they gave 30 days notice to end their employment, however right in their notice it states that they are tendering their resignation

“effective immediately”(my highlighting). And then states “Dated this Thursday, September 6”.

Therefore their employment was terminated effective September 6.

The letter then goes on to state “we give 30 days’ notice forthwith”, however it is my finding that, on the balance of probabilities, the 30 days notice does not relate to the employment, it is meant as a 30 days’ notice to end their tenancy.

Section 6(c) of the employment contract states that “during the length of employment, the Resident Manager shall be entitled to rent suite #107 from the employer at \$500 per month---”. It also states that market rent for this unit is \$1000 per month.

Therefore it is my finding that rent has always been \$1000.00 per month, with \$500.00 being paid by the tenants, and the further \$500.00 per month being paid through a taxable employment benefit. Once the tenants resigned their employment, they no longer qualified for the taxable employment benefit and must pay the full rent themselves.

I therefore allow the landlords prorated amount of \$800.00 for September 2012 rent, and since the tenants have only paid \$500.00 they must pay a further \$300.00.

Further since the tenants have failed to return possession of the rental unit to the landlords, and it is now well into the month of October 2012, I also allow the landlords request for lost rental revenue of \$1000.00 for the month of October 2012.

I also allow the request for an Order of Possession.

I further allow the landlords request for recovery of their filing fee of \$50.00.

Conclusion

Landlord's application

I have issued an Order of Possession that is enforceable two days after service on the tenants.

I have issued a monetary order to the landlords in the amount of \$1350.00.

Tenant's application

The tenant's application 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: October 10, 2012.

Residential Tenancy Branch