



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation for loss – Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to the compensation claimed?

Is the Landlord entitled to recovery of the filing fee?

Preliminary Matter

At the onset of the Hearing the Tenants asked why the other co-owner of the unit was not present and noted that they had submitted a request that this person be added as a Party as this person received their rent payments and made agreements with the Tenants in relation to the end of the tenancy. The Landlord stated that the co-owner is aware of the application and as the Landlord is also a co-owner of the unit the Landlord still acts as Landlord. The Tenants were asked whether they were requesting an adjournment to add this person as a party and stated that they did not want to adjourn the matter to do so. As a result, the Hearing continued.

Background and Evidence

The tenancy started on March 22, 2012 on a fixed term ending March 31, 2013. The Tenants moved out of the unit on December 31, 2012. Rent of \$1,600.00 was payable monthly and at the outset of the tenancy the Landlord collected \$800.00 as a security deposit.

The Landlord argues that as the Tenants entered into a fixed term lease and moved out early, the Tenants owe rent. The Landlord states that the co-owner of the unit was going to move into the unit at the end of the tenancy and that as the co-owner had signed a six month lease at a different location, the co-owner could not move in on January 2013. The Landlord states that as the unit could not be rented for a short term period, the Tenants caused lost rental income by moving out prior to the end of the term. The Landlord states that the unit was advertised for rent starting January 1 or 2, 2013 for immediate occupancy at the same rental rate and that although the Landlord received interest in the unit, after being informed of only a short term rental there was not any interest. The Landlord states that a second advertisement set out a short term rental at the same rental amount. It is noted that the supporting evidence of these advertisements consist of an advertisement to rent the Landlord's residence and an advertisement dated January 8, 2013 for the rental unit with immediate availability and at a higher rental rate of \$1,700.00.

The Landlord provided a copy of the co-owner's tenancy agreement and it is noted that this agreement was signed on September 9, 2012 and that there is no fixed term identified in the tenancy agreement. The Landlord states that the co-owner provided six months post dated cheques on this tenancy and therefore was required to remain in that unit to the end of those six months. The Landlord provided copies of those cheques and it is noted that these cheques are for the months October 2012 to March 2013 inclusive.

The Tenants state that the fixed term agreement indicates that at the end of the fixed term the tenancy would revert to a month to month tenancy and that at signing, the

Landlord did not inform the Tenants that the month to month reversion was not an option and that this option was the only reason the Tenants signed the agreement. The Tenants state that on the day they moved into the unit, the co-owner came to the unit and informed the Tenants that the co-owner and the Landlord were going through a divorce, that the co-owner wanted to move into the unit, that the co-owner knew nothing of the tenancy agreement with the Tenants and that the Tenants would have to move out of the unit. The Tenants state that upon speaking with the Landlord the Landlord confirmed the divorce dispute and told the Tenants not to worry as the Landlord's lawyer approved the rental of the unit.

The Tenants state that they then no longer felt secure in their tenancy and discussed the purchase of a condo with their Landlord who was also a real estate agent at the time. The Tenants state that in mid October 2012 the Tenants informed the co-owner that they were looking at purchasing a condo and asked whether the co-owner would be agreeable to the Tenants moving out before the end of the fixed term. The Tenants state that the co-owner agreed, was looking forward to moving into the unit and asked to store some belongings in the backyard early. The Tenants state that on October 26, 2012 the co-owner and the Landlord together confirmed that the unit would be transferred to the co-owner as of November 1, 2012 and that all future rent payments were to be made to the co-owner. The Tenants state that rent for November and December 2012 was given to the co-owner.

The Tenants state that the Landlord was hired to be their real estate agent and that on November 4, 2013 the Landlord drew up a contract for the purchase and sale of the condo to the Tenants. The offer to purchase was accepted and the Tenants took possession of the condo on November 16, 2012. On this date, the Tenants gave the co-owner notice to end the tenancy for December 2012. The Tenants state that in mid November 2012 the co-owner informed the Tenants that they could not end the tenancy before the fixed term.

The Tenants argue that the Landlord fraudulently misrepresented material facts by failing to disclose that the reversion to a month to month lease was not going to be an option given the divorce and that the co-owner intended to move into the unit. The Tenants further argue that the Landlord acted as their agent for the purchase of the condo knowing that the tenancy would end earlier than the fixed term date and that in acting as their agent for the purchase of the condo, the Landlord provided implied consent to end the fixed term early. The Tenants argue that the Landlord should have advertised the unit for rent by November 8, 2012 as this is when the Landlord had knowledge that the tenancy would end before the fixed term, given the offer to purchase on this date. The Tenants state that the Landlord should have known that the Tenants would not purchase a condo while having to pay rent at the unit.

The Tenants state that after the end of the tenancy they drove by the unit on a near daily basis and saw that the unit was occupied. The Tenants provided a description and plate number of a car that was seen parked at the unit on the days that the Tenants drove by. The Landlord states that this was his car and that he spends a considerable amount of time at the unit as it could not be empty due to insurance requirements. The Landlord states that the co-owner did move into the unit on March 1, 2013 for this reason and states that as a result the Landlord is only seeking lost rental income for January and February 2013.

The Landlord states that there was no agreement to end the tenancy early. The Landlord states that he and the co-owner have not started divorce proceeding so the property has not been settled but that a separation agreement is in place. The Landlord states that the unit could not have been advertised in November 2012 as there was no agreement at that time to end the tenancy and the Tenants might change their mind about moving out of the unit early. The Landlord states that it was the Tenants' intention to make renovations to the purchased condo before moving in.

The Tenant argues that the Landlord accepted a commission of the sale and had an obligation to inform the Tenants that they would still be held to their fixed term date of

the rental unit. The Tenants state that had they known the Landlord would require them to remain in the unit until the end of the fixed term date they would have made this date a condition of the purchase. The Tenants states that they tried to accommodate the Landlord's wishes in moving out of the unit.

Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In acting as both Landlord and real estate agent, the Landlord clearly ought to have known or been alive to the possible conflict between a possession date for the purchased property and the end of the fixed term of the tenancy. Given the undisputed evidence that the Landlord did act as the Tenant's agent in purchasing a condo with an earlier possession date than the tenancy fixed term date, I find that the Landlord in so acting for the purchase provided an implied consent for the Tenant's to end the tenancy before the fixed term date. I therefore dismiss the Landlord's application.

Conclusion

The Landlord's application is dismissed.

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 8, 2013

Residential Tenancy Branch

