



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PROTEGE DEVELOPEMENTS INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, OPL, CNC, CNL, FF

Introduction

This hearing was convened in response to applications by the landlord and the tenants.

The landlord's application is seeking orders as follows:

1. For an order of possession; and
2. To recover the cost of filing the application

The tenants' application is seeking orders as follows:

1. To cancel a notice to end tenancy for cause;
2. For monetary order for money owed or compensation under the Act; and
3. To recover the cost of filing the application.

Both parties appeared, gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Preliminary issue

At the outset of the hearing, the parties agreed the tenancy ended on July 16, 2013 and an order of possession is not required. As a result, I find it is not necessary to hear the landlord's application for an order of possession or the tenants' application to cancel the notice to end tenancy for cause.

In this case, the tenants file their application on June 24, 2013. The landlord's application was filed on July 4, 2013. I find the landlord could have avoided the cost of the filing fee, as the landlord could have requested a verbal order of possession under section 55 of the Act, if the tenants' application to cancel the notice was unsuccessful at the hearing. Therefore, I find the landlord is not entitled to recover the cost of their filing fee from the tenants.

This hearing proceeded on the balance of the tenants' application.

Issue to be Decided

Are the tenants entitled to a monetary order for money owed or compensation under the Act?

Background and Evidence

The tenancy began on February, 1, 2011. Rent in the amount of \$1,600.00 was payable on the first of each month. The rent payable for June and July 2013 was reduced to \$1,000.00 per month. A security deposit of \$800.00 was paid by the tenants.

The tenants stated that they received a 2 Month Notice to End Tenancy for Landlord's Use of Property which was dated May 28, 2013 and received by them on June 1, 2013. The tenant stated the effective vacancy date on the notice was August 1, 2013, however, the tenant stated that date was not correct due to being served on June 1, 2013.

The tenants stated they elected to end the tenancy earlier and on July 6, 2013, provided the landlord with notice to end the tenancy with an effective vacancy date of July 16, 2013. The tenant stated they paid July 2013, rent in the amount of \$1,000.00 and are entitled to the return of a portion of the rent paid in the amount of \$506.13, which is based on the daily rent.

The tenants stated the landlord has not provided compensation equal to month rent for receiving the 2 Month Notice to End Tenancy for Landlord's Use of Property.

The landlord acknowledged that he served the tenants with a 2 Month Notice to End Tenancy for Landlord's Use of Property. The landlord stated he was told that he was entitled to serve a one month notice to end the tenant based on a government order and that notice would cancel the 2 Month Notice for Landlord's Use of Property.

The landlord acknowledged that the tenants provided notice to end the tenancy on July 6, 2013, with an effective vacancy date of July 16, 2013. The landlord acknowledged that they have not provided the tenants a refund of any rent that was paid by them for July 2013. The landlord acknowledged that they have not provided the tenants with any compensation for receiving the 2 Month Notice to End Tenancy for Landlord's Use of Property.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

In this case the landlord served the tenants with two notices to end the tenancy. The 2 Month Notice to End Tenancy for Landlord's Use of Property was issued on May 28, 2013. The second notice to end the tenancy was to comply with government orders was issued on June 2013, which the landlord believed would cancel the first notice issued.

However, under the Residential Tenancy Policy Guideline the landlord cannot unilaterally withdraw a notice to end tenancy without the consent of the other party. In this case, the landlord did not receive from the tenants their consent. As a result, I find the 2 Month Notice for Landlord's Use of Property was a valid notice.

In this case, the evidence of the tenants was they paid rent for July 2013, in the amount of \$1,000.00. The evidence of both parties was the tenant gave notice on July 6, 2013, to end the tenancy on July 16, 2013. The evidence of both parties was the landlord did not refund any portion of rent paid by the tenants for July 2013.

Under section 50 of the Act, if the tenant paid rent before giving the landlord 10 day notice to end the tenancy, the landlord must refund any rent paid for the period after the effective date of the tenants notice. As a result, I find the landlord has breached section 50 of the Act.

While the tenants have indicated the refund should be \$506.13, during the hearing, I find that amount was not calculated correctly. I find the tenants are entitled to return of the daily rent of \$32.26 for the remaining days of July 2013, which was 15 days. Therefore, I find the tenants are entitled to a refund of rent in the total amount of **\$483.90.**

The evidence of both parties was the landlord has not provided compensation equivalent to one month rent to the tenants for receiving the 2 Month Notice to End Tenancy for Landlord's Use of Property.

Under the Act, when a tenant provides notice to end the tenancy earlier than the effective date stated in the notice, that notice does not affect the tenant's right to compensation under Section 51 of the Act. As a result, I find the landlord has breached the section 51 of the Act, when they failed to provided compensation as required. Therefore, I find the tenants are entitled to recover the reduced rent in the amount of **\$1,000.00.**

I find that the tenants have established a total monetary claim of **\$1,533.90** comprised of the above described amounts and the \$50.00 fee paid for this application.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The tenants are granted a monetary order in the above amount.

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: July 31, 2013

Residential Tenancy Branch