



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPT, MNDC and OLC

Introduction

This hearing was convened on an application made by the tenant on August 1, 2013 seeking an Order of Possession of the rental unit after the landlord repudiated the rental agreement signed by the parties on June 3, 2013. The tenant also sought an order for the landlord to comply with the rental agreement and legislation and a monetary award of \$25,000 for loss or damages.

This application was made in the name of two parties, one who attended the hearing and the other who was to be a guarantor and co-tenant who was to move in to the rental unit in September 2013. As the second named applicant is not named on the rental agreement and has not signed the document titled "Guarantee of Rent," with no objection from either party her name was struck from style of cause.

As a preliminary matter, the landlord had submitted a very substantial package of evidence. Because of the unusually fast scheduling of this hearing and because the tenant had not responded to his texted request for confirmation of her address, the landlord had not been able to serve the evidence on the tenant.

In view of the urgency for both parties in determining lawful possession of the rental unit, the parties agreed that the hear should proceed and evidence be submitted orally.

Issue(s) to be Decided

Is the rental agreement legal and binding creating entitlement to an Order of Possession and/or a monetary award for damages for the tenant?

Background and Evidence

This tenancy was set to begin on August 1, 2013 under a three year fixed term rental agreement signed on June 3, 2013. Rent was set at \$2,300 per month including utilities with provision for a future adjustment when or if the tenant took over utilities payments. The tenant paid a security deposit of \$1,000 and had agreed to pay a pet damage deposit of \$1,000 at the beginning of the tenancy.

The rental unit has been the landlord's principal residence for some years, but due to the tolls of a long commute, his family had decided to move closer to work and rent the home for a period until market conditions became more favourable for a sale

The parties concur that the tenant first viewed the property in May 2013. At that time, the landlord stated that he had asked her to provide three years of landlord references and two personal references. The tenant later stated that he had only asked for three landlord references and had not specified three years, an assertion the landlord firmly contested.

The landlord stated that the tenant had provided two rental references, one a former landlord and the other, a friend with whom she had stated for a period. According to the landlord, the tenant had stated that before that, she and her former husband had owned their own home.

After checking the references on which he relied, the landlord contacted the tenant and arranged for their meeting and signing on June 3, 2013. The tenant attended the rental unit on July 23, 2013 to provide post-dated rent cheque and to arrange to move some items into the garage and was given the garage door opener.

As the tenant was leaving, the landlord introduced her to his neighbour who recognized the tenant and was subsequently able to put the landlord in contact with a party who had, in fact, been the tenant's landlord for the period in which she had stated she had lived in a home she owned with her husband.

The landlord was in contact with the former landlord who confirmed that the tenant had been evicted following a hearing on August 29, 2011. While the hearing and resultant Order of Possession and Monetary Order dealt primarily with unpaid rent, the former landlord advised that the Notice to End Tenancy had been issued after numerous noise complaints, damage to the rental unit and repeated late payment of rent.

She advised the present landlord that her rental unit was left broken blinds, broken and missing screens, broken kitchen cabinets and dog droppings. She stated that the Monetary Order for \$1,421.28 remains unsatisfied.

The landlord stated that when he had asked the tenant about the discrepancy, she had minimized its significance when he called her about on July 26, 2013 at which time he had advised that he would be looking into it further. The tenant acknowledged having lived there but first stated she had left because the lease was up, and later acknowledged problems but attributed those to her ex-spouse.

The landlord telephoned the tenant on July 27, 2013 and advised her that on the basis of her gross misrepresentation, he was repudiating the rental agreement and would not proceed with her tenancy, followed by a confirming text message.

Nevertheless, the landlord stated that the tenant appeared at the rental unit on August 1, 2013 with a party of approximately eight persons, a locksmith and a police officer who was able to dissuade the tenant pending an appropriate determination of who had the legal right to occupy the rental unit.

Analysis

Under the common law of contract, an agreement that relies on a misrepresentation of a material fact bestows on the injured party a right of rescission, that is, a right to unilaterally void the contract.

In the present matter, I prefer the evidence of the landlord on the question of whether he had asked for landlord references for three years rather than simply three landlord references.

I find that the tenant was not resident in her own home in year three prior and knew that the reference from the landlord for the rental unit in which she lived at the time would not be viewed favourably. The landlord had already allowed some latitude on the credit reference.

Therefore, I must find that the tenant knowingly misrepresented her qualifications as a tenant for a period reasonably and specifically requested by the landlord.

Therefore, I find that the landlord had a right to rescind the rental agreement.

Having so determined, I must find that any damage or loss sustained by the tenant was a consequence of her own conduct and she is not entitled to a monetary award.

Conclusion

The application is dismissed in its entirety on its merits without leave to reapply.

The parties have agreed to arrange to meet at a neutral location at which time the tenant will return the garage door opener and he will return her post dated cheques. The security deposit may be dealt with in accordance with section 38 of the *Act*.

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: August 09, 2013

Residential Tenancy Branch

