



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RAAMCO International Properties Canadian Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI, CNR, OLC, FF

Introduction

This hearing dealt with an application by the tenants for orders setting aside a rent increase, cancelling a notice to end tenancy, and compelling the landlord to comply with the Act, regulation or tenancy agreement. Both parties appeared and had an opportunity to be heard.

Issue(s) to be Decided

What are the terms of the tenancy agreement?

Background and Evidence

The tenant, JF, had been living in this complex for seven years. In January of 2013 JF, and his future roommate, AS, asked whether any two bedroom units were available in the complex. AS was asked to submit an application for tenancy and on January 22nd, the Assistant Manager, Sue, advised that AS had been approved.

The tenants were offered unit 113, a two bedroom unit, for March 1 occupancy at a monthly rental of \$1070.00. It was also agreed that the tenants would be allowed to move in on the weekend of February 23/24, to accommodate their work schedules. The tenants did not look at 113 because AS was very familiar with the building and the units in it. The tenants were told that 113 was being refurbished.

All of these arrangements were made with Sue, the employee who normally manages the office and the paperwork. Sue had been waiting for hip replacement surgery and when she was offered an earlier surgery date, she took it. As a result, she went on sick leave on short notice.

In her absence, Doug, the building manager had to cover Sue's job in addition to doing his own. This is a 281 unit complex and the staff are very busy.

At the beginning of February Doug called AS confirming that he had been approved and advising that the unit was not ready to look at. The tenants understood that they would

be called when the unit was ready for viewing. The did not hear anything in the next two weeks so on February 14 they called Doug. He told them the unit was still not ready but they could look at it.

On February 16 the tenants looked at 113 with a third staff person. The unit was not ready to be moved into and did not appear that it would be ready by the following weekend. This third staff person showed them unit 207, a two bedroom plus den unit, in the same building. It was available immediately.

The monthly rent for a two bedroom unit is \$1070.00; the monthly rent for a two bedroom plus den unit is \$1160.00.

The tenants told this third staff person they were prepared to take 207 but only at the rent they had agreed to pay for 113. The staff person said she would have to talk to Doug.

The tenants testified on Monday, February 18, AS spoke to Doug. He asked if, in light of the fact that unit 113 was not going to be ready, they could take 207 but at the price they had agreed to pay for 113. Doug said he would look at the price but their request was perfectly reasonable.

JF testified that he called Doug on February 20. Doug told him \$1070.00 was acceptable. He asked them to sign the tenancy agreement on Friday so he could give them the keys. He also told JF that they would deal with the other paperwork later as JF had already paid a security deposit for his current unit.

On Friday JF met Doug. He did not sign the tenancy agreement because AS was not there but Doug gave him the keys anyways.

On Saturday all three men met at the office, which was in some disarray. All three were in a rush. The tenants were moving from two separate units into one and Doug had many tasks to perform that day. The tenants signed the move-in condition inspection report and the tenancy agreement. Neither tenant looked at the tenancy agreement before signing it. They testified that they assumed that it reflected their previous conversations. The tenants thought they gave twelve post-dated cheques in the amount of \$1070.00 each at that time.

Doug's testimony is that when the tenants asked for a better price he told them he would have to check with the owners. In the end all he could offer as \$10.00 off the parking fee. He testified that he did not remember the conversation with the tenants

when the tenancy agreement was signed but he has a general procedure which he follows on those occasions, including discussion about the price.

In March, after the security deposit for JF's previous unit had been returned to him, the tenants paid a security deposit of \$535.00.

The tenants' cheques were cashed without comment until August. By then Sue had returned to work and was catching up on the paperwork. Sue and Doug discovered that their paperwork said the rent was \$1160.00 a month but the tenants had only been paying \$1070.00. They sent the tenants a letter asking for payment of the difference between the two amounts and another \$50.00 for the security deposit.

This was the first time the tenants looked at the tenancy agreement and discovered that it specified rent in the amount of \$1 160.00.

After some further correspondence the landlord issued and served the tenants with a 10 Day Notice to End Tenancy for Non-Payment of Rent. The landlord's witnesses testified that the notice had been voided pending the outcome of this dispute resolution proceeding. The tenants have continued to pay the lower rent.

Analysis

It is settled law that if owing to a mistake the written contract does not substantially represent the real intention of the parties the court has jurisdiction to rectify the written agreement.

I do not think that the landlord's witness remembered any of the particulars of the conversations he had with the tenants – which is understandable given the situation in which he found himself in February – but relied upon the written documents. Although the landlord's and tenants' version of events varied, the landlord's witnesses did not really dispute the tenants' evidence.

I find that:

- The landlord and the tenants did agree that the monthly rent for unit 203 would be \$1070.00.
- A mistake was made by the landlord when completing the written tenancy agreement.
- The written tenancy agreement does not reflect the true agreement of the parties.

Accordingly, I order that the tenancy agreement dated February 23, 2013, be rectified by changing the rent to be paid to \$1070.00. All other provisions of the tenancy agreement remain the same.

Conclusion

An order rectifying the tenancy agreement has been made.

As the tenants were successful on their application they are entitled to reimbursement from the landlord of the fee they paid to file it. Pursuant to section 72 the sum of \$50.00 may be deducted from the next rent payment due to the landlord.

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: February 03, 2014

Residential Tenancy Branch

