



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened to address a claim by the tenants for a monetary order. Both parties participated in the conference call hearing.

At the hearing, the landlords advised that their surname had been misspelled on the application for dispute resolution and asked that it be changed to reflect the correct spelling. The style of cause in this decision reflects that change.

The tenants claimed for the return of a security deposit and pet deposit. At the hearing, the female tenant, who appeared on behalf of both herself and the male tenant, acknowledged that they did not pay a pet deposit and that the landlords had returned the security deposit. I therefore consider those claims to have been withdrawn.

Issue to be Decided

Are the tenants entitled to a monetary order as claimed?

Background and Evidence

Most of the facts are not in dispute. The tenancy began as a month-to-month tenancy on December 15, 2012. The tenants gave several notices to end their tenancy effective July 1, 2013 but at some point changed their minds and asked the landlords to allow them to stay. On June 12, 2013, the parties signed a fixed term tenancy agreement which was set to expire on October 15, 2013. When that fixed term expired, the tenants asked to enter into another agreement and on the same date, the parties entered into yet another fixed term agreement expiring on February 15, 2014. On February 8, 2014, the landlords advised the tenants that the fixed term was ending on February 15 and that they were not interested in entering into another agreement. The tenants reluctantly vacated the rental unit.

Both of the fixed term tenancy agreements contained this clause, initialled by the parties, and each clause contained the appropriate dates as indicated above:

This will be a fixed term tenancy which will begin on ____ and end on _____. If the tenancy is for a fixed length of time, at the end of the fixed time, the tenancy will end.

The tenants argued that because the agreement did not state that the tenants would have to move out of the rental unit at the end of the fixed term, the landlords did not have the right to ask the tenants to leave the unit. They testified that on two separate occasions, they were told by staff members at the Residential Tenancy Branch that they would not have to vacate unless the tenancy agreement specifically stated that they had to do so. They seek to recover the costs incurred in moving to a new unit as they believe they were wrongfully evicted.

Analysis

Section 44 of the Act describes the ways in which a tenancy can end and with respect to fixed term tenancies, provides as follows:

44(1)(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

In this case, the clause in question clearly did not state that the tenants had to vacate the rental unit at the end of the fixed term. However, that clause is only part of the evidence submitted. The parties agreed that when they entered into both of the fixed term tenancies, there was a clear understanding that at the end of the term, the tenancy would either end or a new tenancy agreement would be negotiated. The tenants seem to be under the impression that the landlords were obligated to negotiate a new tenancy agreement, but this is not the case. The parties agreed that the only reason the tenants were still in the unit after having given notice to end their tenancy in early 2013 was because they had asked the landlord for “a few more months”. This indicates to me that the tenants were very aware that their tenancy was not a month-to-month tenancy and would terminate at the end of the fixed term.

Because the parties had established a pattern whereby they would not continue the tenancy unless a fixed term agreement was in place, I find that the tenants knew or ought to have known that they were required to vacate at the end of the tenancy. Although the tenants were told by staff at the Residential Tenancy Branch that they did not have to vacate unless the fixed term clause specifically required them to do so, this advice is not binding on me and I find it more likely than not that the tenants were not

completely forthcoming with staff members and likely failed to tell them that they had already given their notice to end their tenancy and that the fixed terms were entered into at their request and with the understanding that they would not be extended.

I therefore find that the landlords' notice to them on February 8, 2014 advising that they had to vacate the unit at the end of the fixed term was not an unlawful notice and therefore, the tenants are not entitled to receive compensation.

I dismiss the tenants' claim in its entirety.

Conclusion

The claim 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: June 06, 2014

Residential Tenancy Branch

