



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Schmingee Holdings Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPL
 CNL, OLC, FF

Introduction

This hearing was convened by way of conference call concerning applications filed by the landlords and by the tenants. The landlords have applied for an order of possession for landlord's use of property. The tenants have applied for an order cancelling a notice to end tenancy for landlord's use of property; for an order that the landlords comply with the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlords for the cost of the application.

Both tenants and the named landlord attended the hearing, and the named landlord represented the landlord company. Each of the parties gave affirmed testimony and each of the parties called one witness, who also gave affirmed testimony. The parties were given the opportunity to cross examine each other and the witnesses on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

The parties have both provided a copy of a Residential Tenancy Agreement, Notice to End Tenancy and a Permit. The tenants also provided other evidentiary material later than permitted by the Rules of Procedure, however, with the consent of the landlord, that evidence is also considered. No other issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

- Are the landlords entitled under the *Residential Tenancy Act* to an order of possession for landlord's use of the property?
- Should the notice to end tenancy be cancelled?
- Have the tenants established that the landlords should be ordered to comply with the *Residential Tenancy Act* and the tenancy agreement?

Background and Evidence

The parties agree that this tenancy began in 2011, and the tenants still reside in the rental unit. Rent in the amount of \$1,000.00 per month is payable in advance on the 1st day of each month and there are no rental arrears. No security deposit or pet damage deposit were paid.

The landlord testified that he purchased the rental building and obtained possession of it July 1, 2014. The tenants were already resident, having moved in during the month of April, 2011. When the landlord took possession, the seller had advised that the tenants were on a month-to-month tenancy. The landlord met with the tenants who showed the landlord a tenancy agreement. The landlord was surprised and called the seller who denied that a 5 year term had been agreed to. The tenants gave him a copy, and he showed it to the seller later, and the seller confirmed that he had checked the "on a month to month basis" box and initialed beside the box that says, "at the end of the fixed length of time" because above that it states: "check box a, b, or c." A copy of the tenancy agreement has been provided, and it shows that the box showing "Month to month" had been checked which is scribbled out and the "for a fixed length of time" box is checked. It also shows that the length is 5 years, ending on June 1, 2016. The seller told the landlord that he had filled it out and left it with the tenants to sign and it was not yet signed by the landlord. They were to get the natural gas hooked up and needed a tenancy agreement, so they were to return a copy to the landlord but never did. The landlord further testified that the portion of the original tenancy agreement that the seller disagreed with is in a different pen and in different handwriting.

The landlord further testified that when he purchased the building, his intention was to knock it down and build 2 side-by-side duplexes because it's a double lot and the seller knew that. The Residential Tenancy Branch advised that the landlord had to provide the tenants with compensation, and when one of the tenants arrived to pay rent, the landlord said she didn't have to pay, but she insisted. No receipt was given. The landlord also offered the tenants an additional \$2,000.00 for moving expenses to prevent arbitration.

The landlord has also provided a copy of a permit to demolish the building, and testified that no further permits are necessary.

The landlord issued a 2 Month Notice to End Tenancy for Landlord's Use of Property and has provided a copy for this hearing. The notice is dated June 28, 2014 and contains an effective date of vacancy of October 1, 2014. The landlord personally handed it to one of the tenants on July 28, 2014. The reason for issuing the notice

states: "The landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant." The landlord requests an order of possession.

The landlord's witness testified that he was the seller of the rental unit, and had planned to demolish the building but the market was soft. So he fixed it up a bit before the tenancy began and the natural gas was still in the old owner's name. The tenants couldn't get it connected until they had a tenancy agreement and were panicking, so the witness' wife printed out the tenancy agreement form and the witness filled it out. He checked the month-to-month box because the house was already for sale at that time and a For Sale sign was in the yard when the tenants moved in. The commencement of the tenancy portion of the form is in his writing, where it shows June 1, 2011 and is in blue ink. That has been scribbled out in black ink, but it was not done by the witness. He also testified he initialled the box because he was showing he had checked box a) and he did not check the box that states that the tenancy may continue on a month to month basis. He further testified that he did not write on the form that the tenancy would end on June 1, 2016, and that is not his handwriting.

He also testified that the security deposit and pet damage deposit sections have been crossed out in black ink, also not done by the witness. He testified that he left those portions blank because he wanted to discuss it with the tenants. He had asked for \$500.00 because the witness had put in new flooring. The tenants had told the witness they had done work to the place so they weren't going to pay a security deposit. The tenants both signed in black ink, and the witness didn't sign it at all. He stated that he believed the tenants would sign it the way it had been filled out by the witness but left it with the tenants and went to work. The witness asked for a copy later but the tenants refused saying it was their contract. The only reason the agreement was prepared in the first place is because the tenants needed it in order to get the natural gas hooked up. The witness never received a copy.

The witness also testified that the rental unit was not in good shape when the tenants first moved in and they received the rental unit rent-free for the first 1 ½ months and repairs made by the tenants were deducted from rent.

The first tenant testified that the tenants had to clean and air out the house before they could move in and did most of the work. They would not have invested that much time and effort into someone else's house unless it benefited them. They didn't pay the landlord a security deposit because they did most of the work, nor did the landlord at the time ask for a security deposit.

The tenant further testified that the previous owner and the tenants, along with the previous owner's mother, were all at the dining room table in the rental unit when the parties entered into the tenancy agreement. The previous landlord told the tenant to fill in what she had to, so she crossed out "month-to-month" and wrote in the date of June 1, 2016 as the end of the tenancy. The tenants used black ink because they were told that was legally acceptable, and she gave the previous owner a copy.

All was well until July 28, 2014 when the new landlord gave the tenants the notice to end the tenancy and a copy of the permit. He took pictures of the property as well as another man. A branch had broken off a tree from the wind, and the landlord harassed the tenant about that. Several emails were exchanged about the yard and pets, and the tenant finally emailed the landlord asking that he stop harassing the tenants.

The second tenant testified that a lot of effort went into fixing up the rental building by the tenants, and agreed to a 5 year fixed term because they had a plan set up to rent there and save up to buy a house.

He also testified that all of the parties were sitting together when the tenancy agreement was made.

The tenants' witness testified seeing the contract a day after it was signed. The witness is a close friend of the tenants and is well aware of the facts of the tenancy but was not present when the tenancy agreement was signed.

Analysis

I have reviewed the evidentiary material provided by the parties, and although the tenants have some testimony with respect to how the tenancy agreement has two different color pens, I am not satisfied that the landlord at that time agreed to those terms. He testified that he did not agree to a 5 year fixed term, and it's clear in the evidence that the tenant added it, and I find that the tenancy agreement was and still is on a month-to-month basis.

I have also reviewed the notice to end tenancy and I find that it is in the approved form and contains information required by the *Residential Tenancy Act*, and I accept that it was personally served to one of the tenants on July 28, 2014. I also find that the landlords have established that the necessary permits are in place, and the landlords are entitled under the *Residential Tenancy Act* to an order of possession on 2 days notice to the tenants, since the effective date of vacancy has passed. The tenants' application is hereby dismissed.

Since the landlords have been successful with the application, the landlords are also entitled to recovery of the \$50.00 filing fee, however a landlord is required under the *Act* to provide the tenants with the equivalent of one month's rent as compensation. I leave it to the parties to determine how those amounts will be recovered.

Conclusion

For the reasons set out above, the tenants' application is hereby dismissed without leave to reapply.

I hereby grant an order of possession in favour of the landlord on 2 days notice to the tenants.

This order is final and binding and may be enforced.

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: October 30, 2014

Residential Tenancy Branch

