



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR MNDC LRE OPR FF

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for unpaid rent pursuant to section 46;
- b) An Order that the landlord comply with the Act;
- c) For compensation for the landlord's entry into the unit without notice contrary to section 29 and her moving expense as the landlord is selling the unit; and
- d) To recover filing fees for this application.

Service:

The Notice to End Tenancy is dated December 2, 2014 to be effective December 10, 2014 and the tenant confirmed it was served by posting it on the door. The tenant /applicant gave evidence that they served the Application for Dispute Resolution by registered mail and the landlord agreed she received it on December 16, 2014. I find the documents were legally served for the purposes of this hearing.

Issue(s) to be Decided:

The tenant gave notice and vacated so an Order of Possession is no longer needed. The remaining issues are whether the tenant proved on the balance of probabilities that they are entitled to compensation for illegal entry, moving expenses and filing fee?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced September 15, 2013, it is now a month to month tenancy, rent was \$1950 a month and a security deposit of \$975 was paid. The tenant said they gave permission to the landlord in the Application for Dispute Resolution package (received by the landlord on December 16, 2014) to retain the security deposit for two weeks rent owed for December 2014.

The tenants are requesting a refund of one month's rent for entry into their unit without written notice and moving expenses because they had to vacate when the landlord sold the unit. They said they left on vacation on November 26, 2014 and returned December 3 to find that the landlord had entered their home. The landlord said she did not know the tenants were on vacation, they had given her notice to end their tenancy for December 15, 2015, they had not paid rent for December, she called several times and got no answer so she assumed they may

have abandoned the unit and entered without notice to inspect and see if it was abandoned. She left when it was obvious it was occupied. She said she had an appraiser coming in. The tenants contend that the landlord knew they were not vacating until December 15, 2014 as they had had discussions with her and the need to have the date moved from November 30, 2014 to December 15, 2014. They said they claimed moving expenses for they felt forced to vacate.

The tenants said there were also a lot of entries by the realtor without proper notice. One entry is quoted in their statement when the son was home ill. At other times, they note they were present to allow entry and they "were forced to agree to this method as the schedule the landlord presented was unacceptable".

The landlord said that the one year lease had expired August 2014 and the tenants kept changing their mind as to how much longer they would stay, they agreed to go to a month to month but in September, one of the tenants told her she had medical issues and could no longer afford to live there. The landlord said the tenants said they would give 2 weeks notice and leave so she listed the unit for sale. However, on October 15, 2014, she said the tenants changed their minds and gave her 6 post dated cheques and said they were staying. She explained she had listed the property and tried to arrange a schedule for showings with the tenant; the tenant refused a schedule because she said it was unreasonable to have daily two hour windows for showings. She said the tenant then said they would go with 24 hour notices of showings and the agent was instructed to do this. The agent informed the landlord that the tenant had agreed to 24 hour notice by telephone calls, then withdrew her agreement and said she wanted it in writing; he also told the landlord that the tenant was being difficult on the showings. The tenants then told the landlord they wanted to buy the unit but changed their minds and said they were giving notice to vacate on December 15, 2014 and requested return of their post dated cheques and the landlord complied.

Included with the evidence is the Notice to End Tenancy and a written statement by the tenants.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

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Analysis:

The tenants have vacated so it is no longer relevant to consider their application to cancel the ten day notice to end tenancy.

In the Application for a refund of rent, the onus is on the tenant to prove on a balance of probabilities their claim. I find the tenant's evidence credible that there was entry by the landlord without any notice in December and without written notice from the realtor on some other occasions. Whether or not the landlord believed the tenants had consented to telephone notice, I find section 29(1)(b) of the Act imposes the duty on the landlord to give 24 hour written notice of entry unless the tenant gives permission at the entry section 29(1)(a). I find the weight of the evidence is that the tenants were home and gave permission to the realtor to enter on

several occasions as set out in their written statement; however, I find on one occasion, the realtor entered without notice and disturbed a sick tenant and on the other occasion, the landlord entered without notice while they were absent.

Although the landlord said she thought the tenants may have abandoned the property, I find the weight of the evidence shows through their negotiations, she should have known they were residing there until December 15, 2014. Therefore, I find the tenants have satisfied the onus of proving on a balance of probabilities that there were two entrances without written notice or permission contrary to section 29 of the Act. I find insufficient evidence to support their contention that they were forced or coerced into agreeing to the other entries. I find the tenants entitled to a refund of two days rent for the two illegal entries for a total of \$125.80 ($\$1950/31=62.90 \times 2$).

I find insufficient evidence to support the tenants' submission that they were forced to vacate. I find the evidence supports the landlord's statements that the tenants kept changing their minds and she listed the property when they stated they were leaving within a few weeks. They could have stayed until a purchaser gave notice through the landlord for vacant possession but they chose to give notice to end their tenancy. The fact that they may not have known the provisions of section 49 of the Act may be unfortunate but it is their responsibility to know the law. I find insufficient evidence of any coercion to vacate. I find the landlord is not responsible to pay their moving expenses.

Conclusion:

I find the tenant entitled to a refund of rent for two days totalling \$125.80 and to recover their \$50 filing fee for this application. A monetary order is issued to the tenant for \$175.80 ($125.80+50$)

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: January 07, 2015

Residential Tenancy Branch

