



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REalty Executives Eco-World
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, MNR, FF

Introduction

This hearing dealt with two related applications. One is the tenant's application for an order compelling the landlord to comply with the Act, regulation or tenancy agreement. The other is the landlord's application for a monetary order. Both parties appeared and had an opportunity to be heard.

Considerable time was spent at the beginning of the hearing confirming what evidence the landlord had received from the tenant or already had in its possession. Only those pieces of evidence have been considered in the preparation of this decision.

As the parties and circumstances are the same for both applications, one decision will be rendered for both.

Issue(s) to be Decided

- Should any order be made against the landlord and, if so, on what terms?
- Should a monetary order be made in favour of the landlord and, if so, in what amount?

Background and Evidence

The landlord named in these applications is the realty firm that manages the property on behalf of the owner. Both the business agent and the agency owner testified.

The agent testified that the previous tenant had rented this property for three years at a monthly rate of \$4500.00 and during this time never made a request for repairs.

The unit was advertised at a monthly rental of \$3800.00.

The tenant is a builder. He testified that this property had been on the market for a long time because it was in very poor condition.

He offered to rent the property for \$3000.00 a month plus a number of renovations in return for a two year tenancy. His offer was not accepted.

After some negotiation the landlord and the tenants agreed on \$3500.00 per month. The landlord assumed responsibility for deck and drywall repairs and the tenant assumed responsibility for the cost of painting. They also agreed that the tenancy would start on December 1, 2014 and would be for a two year term.

When I specifically asked the agent whether the amount of the monthly rent was conditional on the tenant replacing the carpets she replied that it was not – the price agreed upon was based on the current condition of the property.

The landlord's office prepared a tenancy agreement that reflected those terms and sent it – unsigned – to the tenant by e-mail. The document was a standard Residential Tenancy Branch form with a page of additional terms attached. There is no mention in the document of repairs or renovations to be done by either party. A copy of the e-mail was not filed in evidence and the agent could not say when it had been sent.

The tenant testified that he made two corrections to the tenancy agreement, signed it and returned it to the landlord – all on November 5. On November 6 he paid the security deposit of \$1750.00 and the pet damage deposit of \$1750.00.

The agent testified that the landlord did not sign the tenancy agreement at this time because they wanted to sure that the tenant lived up to his agreement for repairs. She also testified that they did not start talking about changing the flooring until after November 5. On further questioning she was very clear that the discussions about the flooring did not start until after the tenant had signed the tenancy agreement.

The agent testified that the negotiations regarding the flooring was conducted by e-mail, text message and telephone communications. None of the written communications were filed in evidence. The agent testified that the eventual agreement regarding the flooring was not reduced to writing because she trusted the tenant.

The tenant testified that all the discussions about cleaning, painting, etc took place before he signed the tenancy agreement. They also discussed giving him possession a few days early before the agreement was signed.

The parties agreed that the tenant would be given the keys on November 15 and that he would not be charged any rent for the last half of November. Both parties understood

that the tenant wanted to do cleaning and painting during this time. The landlord's contractor was also going to be doing some work at the house at the same time.

The agent testified that the agreement was that in addition to the painting and cleaning the tenant was going to replace flooring in some rooms, at the tenant's expense. The tenant testified that he thought it was his choice whether the carpets would be replaced or cleaned; either way it would be at his expense.

The tenant was given the keys on November 15. A move-in inspection was conducted and a move-in condition inspection report completed. The landlord's contractor also picked up keys on the same day.

The agent testified that the landlord did not sign the tenancy agreement before the keys were given to the tenant on the 15th because they did not know if the tenant was going to comply with the agreement for repairs.

The tenant testified that the painters started work on November 18. Ultimately he paid the painters \$3500.00. He stated that all of the baseboards were moldy so he removed, cleaned, primed and painted them. He had two other handymen working on various repairs to the kitchen cabinets and closets, such as adding shelves to the closets. He also paid cleaners \$800.00 to thoroughly scrub the house.

The tenant testified that after the bedroom carpets were cleaned their actual condition was better than expected so they decided not to replace them.

An inspection of the rental unit was arranged for the afternoon of November 27.

The tenant testified that when he called the moving company they told him they were already booked for December 1. They arranged to have some items delivered on the morning of November 27. A copy of the moving company's invoice was not filed in evidence.

The landlords testified that when they went to the rental unit on November 27 the house looked settled, there was a made-up bed in at least one bedroom, and the carpets had not been replaced. They came to the conclusion that the tenant had obtained early possession of the rental unit by deceit.

The female tenant testified that she was on her own when the landlords came to the house. She was showing them the work they had done when the agent started swearing and shouting at her, threw her purse at her and left. Although both of the

landlord's witnesses gave rebuttal evidence neither contradicted the female tenant's description of this part of the inspection.

The male tenant testified that the bedroom carpets had been cleaned on the 26th, they were still wet on the 27th and the bedrooms were empty on the 27th.

Both tenants testified that they continued to move belongings into the rental unit over the next few days and did not start sleeping there until December 1 or 2.

The tenants say the landlord's contractor was working there and could verify when they moved in. There was no evidence from the contractor. The landlord's position is that whether their contractor was working at the rental unit or not is irrelevant to the questions of whether the tenants moved into the unit.

On December 1 the landlord sent the tenants a new tenancy agreement. A copy of the proposed tenancy agreement was not filed in evidence. The agent testified that the new agreement is for a month-to-month tenancy commencing November 15.

The landlord's cover letter, which was filed in evidence, stated:

"The original agreement is that you would take possession on Nov. 15th, for the purpose of doing renovation. You have clearly informed us that the existing carpet is not acceptable, the laminate floor in all rooms must be replaced. After we discussed with the owner, that we will rent the house as is, due to the rent rate we offered is well below the market price.

You have promised me that you will only for December 1st, and the extra two weeks' time is only for the renovation, including painting and change laminate flooring . . .

From the landlords point of view he reduced the rent \$300.00 per month to accommodate any work you undertake.

This in fact over a 2 year contract amounts to \$7200.00.

In all fairness to you and the landlord let's honor the original agreement we had in place."

The tenants have refused to sign this contract. They have paid the December and January rents in full.

In December and January the e-mail correspondence filed by the parties follows two main themes. One is the tenants' requests for repairs and the other is the tenants' pleas/demands for a signed copy of the tenancy agreement they signed.

The landlord's responses to the issue of the contract were:

On December 10 – "We discussed that it is your responsibility to change the floor at your cost. You told me you would like to take possession in mid November; so you could hire a contractor to do the job. . . On this condition we have agreed to hand over the keys to you on November 15th. When we attended the property we saw no changes to the floor, and this was a condition we both agreed upon. We must charge the pro-rated rent for November, which the amount will be \$1750.00."

On December 29 – "We take the position that you did not live up to our original agreement and were in possession of the keys as of November 15, 2014. This is regardless whether there were workers in the home. We had discussions on what you were going to do when you did have early possession. We rented this home at a very low rate with conditions that you did not adhere to."

December 30 – "You forget where all the problems came from originally. You promised that you will change the laminate floor and you won't move in until Dec. 1st, and you would like to take possession earlier, so we allow you to take possession on Nov.15th, without charge half month rent for Nov. To our surprise, when we did our inspection on Nov. 27th, you not only moved in completely, but didn't change the carpet at all."

The landlords testified that the owner of the property has lost confidence in the tenant and is no longer prepared to agree to anything other than a month-to-month tenancy.

They also testified that they have no idea when the tenants moved into the rental unit.

The tenant testified that he only undertook the renovations he did was because he was assured of a two year term. He estimated the cost of replacing the carpets in the bedrooms at \$1700.00.

There was considerable evidence about the other repairs the tenants said were required. However as the tenants had not applied for a repair order I advised the tenants that I was not prepared to make any order regarding repairs. At the end of the hearing the landlord and the tenant were making arrangements for a further discussion about repairs.

Analysis

The tenancy agreement sent to the tenants on November 5 was an offer made by the landlord to the tenants. This document reflected the landlord's view of the agreement and contained the terms the landlord wanted in the contract.

When the tenants signed the contract and paid the security deposit and the pet damage deposit they accepted the landlord's offer.

Whenever an offer made by one party to another is accepted by the second party, a valid and binding contract is formed. That is the case here. The fact that the landlord did not sign its' offer and later chose not to sign the document is irrelevant to the issue of whether a valid contract had already been formed.

The landlord's evidence is that the negotiations regarding a change to the possession date did not start or conclude until after the tenancy agreement was signed by the tenants. The agreement that was ultimately reached is an amendment to the existing tenancy agreement as it only related to one aspect of the tenancy agreement, the possession date.

The parties gave conflicting evidence on the terms of this amendment. The landlord says early possession was given, rent free, on the condition that the tenants would replace the flooring. Basically, the tenant says that early possession was given to accommodate all the repairs and cleaning, which may or may not have included replacement of the flooring.

On any application the onus is on the party alleging that a particular fact exists – in this case the terms of the amending agreement – to prove that fact on a balance of probabilities.

According to the landlord there was correspondence relating to the negotiations however, the landlord chose not to file that evidence.

The landlord has not met its' onus of proof. There is no evidence that tips the balance of probabilities in favour of the landlord's version of the amending agreement.

The evidence did establish that the tenants would only be permitted possession of the rental until from November 15, without charge, for the purpose of facilitating the work to the unit, not for occupation by the tenants. If the tenants started living in the rental unit before December 1 they should pay rent for the time they lived in the unit.

The only evidence on the issue of whether the tenants started living in the unit early and, if so, on what date, is the conflicting oral testimony and e-mails written after the fact, of the parties. Both parties had evidence they could have submitted in support of their statements. The landlord had contractors working in the unit who could have testified about what they observed; the tenant could have filed the invoices from the moving company. Neither party chose to submit all the evidence available to them.

I find that the tenants were in occupation of the rental unit on November 27. There is no evidence to establish that they were there any sooner. Accordingly the tenants must pay the landlord the sum of \$466.68 for use and occupation of the rental unit from November 27 up to and including November 30. (\$116.67/day X 4 days)

Conclusion

- a. I order that the landlord must comply with section 13(3) of the *Residential Tenancy Act* and provide the tenants with a signed copy of the tenancy agreement the landlord presented to the tenants on November 5, 2014. If the landlord does not comply with this order within two weeks of receiving this decision the tenants may apply to the Residential Tenancy Branch for compensation for the landlord's failure to comply.
- b. I order the tenants to pay the landlord the sum of \$466.68 and I grant the landlord a monetary order in this amount. If the tenants do not pay this amount to the landlord the landlord may file it in the Small Claims Court and enforce it as an order of that court.
- c. As both parties have had partial success on their respective applications no order will be made with respect the filing fee paid by each.

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 17, 2015

Residential Tenancy Branch

