



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF, O

Introduction

This hearing was convened by way of conference call in response to the tenants' application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; other issues and to recover the filing fee from the landlord for the cost of this application.

The tenants and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The landlord confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this tenancy started on August 01, 2010 and was renewed for a fixed term on August 01, 2014. This term required the tenants to vacate the rental unit at the end of the July, 2015. Rent for this unit was \$2,290.00 per month due on the 1st of each month.

CY testified that the landlord had served the tenants with a Two Month Notice to End Tenancy and a hearing was held on January 21, 2015. The tenants disputed that Notice and were successful in having the Notice set aside. The landlord served the tenants with a One Month Notice to End Tenancy for cause and a hearing was held on February 23, 2015. The tenants disputed that Notice; the landlord did not attend the hearing and the Notice was set aside.

CY testified that it was made clear to the tenants by the landlord that the landlord wanted possession of the rental unit. The tenants asked the landlord to sign a mutual agreement to end tenancy on February 26, 2015 and the tenants would vacate on March 31, 2015. The landlord refused to sign that agreement so the tenants found alternative housing and vacated the rental unit on March 31, 2015. CY testified that they had also asked the landlord's permission to assign the rental unit for the remaining term of the tenancy but the landlord refused to sign the document.

CY testified that since December, 2014 until March, 2015 the landlord's actions in issuing these Notices have disturbed the tenants' quiet enjoyment of the rental unit. The landlord's actions in trying to evict the tenants caused the tenants considerable disruption as they had to find another place to live, file applications to dispute the Notices and attend hearings. The landlord should never have served the tenants with the Two Month Notice as it was issued for the landlord's use of the property and yet the tenants had a right to stay in the unit as this was a fixed term tenancy until July 31, 2015. The landlords false allegations made on the One Month Notice caused the tenants turmoil and distress. CY had to cancel a scheduled surgery due to the landlord's actions in trying to evict the tenants.

CY testified that on March 28, 2015 the tenants came home and found a card from a real estate agent in the unit. This real estate agent had entered the tenants' unit without notice or permission. CY called the real estate agent and was told she had permission to enter from the landlord's real estate agent. The tenants felt violated as they were in the process of moving out.

The tenants seek to recover compensation from the landlord equal to two months' rent for the loss of quiet enjoyment to an amount of \$4,580.00. The tenants also seek to recover the filing fee of \$50.00.

The landlord testified that she had always had a good relationship with the tenants and after renewing the tenants' contract the landlord's son was accepted into university. The landlord explained that in order to pay for this she told the tenants she would have to sell the rental unit but would help the tenants find a new place and pay for their move. The landlord agreed she did give the tenants a Two Month Notice to End Tenancy for landlord's use of the property but at the hearing found she was not entitled to do this. The tenants had also caused some damage in the rental unit so the landlord then served the tenants with a One Month Notice to End Tenancy for cause as the tenants said they would not repair the damage.

The landlord testified that later she was able to sell the home she was living in and when the tenants asked the landlord to sign the mutual agreement to end the tenancy or assign the lease the landlord refused to sign it as the tenants no longer needed to vacate the rental unit. The landlord testified that as far as she was concerned the tenancy could have continued.

The landlord testified that the rental unit had been on the market but was taken off the market in December, 2014. The landlord testified that her realtor still had the rental unit listed on his site and when the other realtor called to view the property that realtor was told that the property was no longer on the market. The landlord testified that she did not know at the time that the realtor had entered the property without permission and this was out of the landlord's power to control. That realtor has now been reprimanded. The landlord disputed the tenants' claim for compensation.

CY disputed the landlord's testimony. CY testified that the property was listed on October 28, 2014 for 157 days. It was still an active listing on April 03, 2015 when the tenant checked. The property still had the lock box attached and this enabled the realtor

to enter the tenants' home. CY disputed that the landlord is not responsible but the actions of the realtor.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. The tenants seek compensation for the loss of quiet enjoyment of the rental unit to the sum of \$4,580.00. The tenants have provided documentary evidence of two Notices to end the tenancy and two decisions rendered concerning these Notices. Both Notices were set aside. I refer the parties to a similar case dealt with in the Supreme Court of Whiffin v. Glass & Glass (July 26, 1999). In this case it was held that attempts by the landlord to end a tenancy, if he believes he has grounds, do not constitute a breach of the covenant of quiet enjoyment of the premises. That case is the authority over this issue, and states that as long as a landlord believes he has reason to end the tenancy, he can make that assertion "frequently, emphatically and even rudely" and that the landlord is entitled to threaten proceedings in the courts for possession, even if the landlord is wrong. The tenants remedy would be to dispute the notice ending the tenancy once given. Consequently in this matter I find the landlord is entitled to threaten eviction even if they are wrong and the tenants' application for compensation due to these threats is dismissed.

With regard to the tenants' claims that a real estate agent entered their home without permission or proper notice; in this matter I find there is no dispute that a real estate agent did enter the tenants' home, no written Notice was provided and no permission was given. The landlord argued that this was out of her control and the tenants argued that as there was still an active listing and a lock box it was in the landlord's control. I have considered both arguments in this matter, the tenants have the burden of proof to show that the landlord acted negligently in protecting the tenants' right to quiet enjoyment or protecting their right to be given proper notice before entry by this real estate person.

The tenants have not shown that the landlord acted in a negligent manner and I accept that the landlord was not party to this and was unaware that the real estate person had entered without written notice or permission from the tenants. Consequently, I am not satisfied that the tenants would be entitled to compensation for an event that occurred once. The tenants have not shown that there had been a substantial interference with the ordinary and lawful enjoyment of the premises by the landlord's actions that rendered the premises unfit for occupancy for the purposes for which they were leased or inaction by the landlord which permitted or allowed physical interference by an outside or external force which is within the landlord's power to control. Consequently the tenants' claim for compensation is dismissed.

As the tenants' claim has no merit the tenants must bear the cost of filing their own application.

Conclusion

The tenants' application is dismissed without leave to reapply.

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: April 08, 2015

Residential Tenancy Branch

