



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPT

Introduction

This hearing was convened in response to an application by the Tenant pursuant to section 54 of the *Residential Tenancy Act* (the “Act”) for an Order of Possession.

Issue(s) to be Decided

Is the Tenant entitled to an order of possession?

Background and Evidence

The Tenants state that on May 19, 2015 they spoke with the caretaker of the condos that the Tenants were interested in renting. The Tenant states that they were told that the floor plans for the units were all the same and that unit #14 was currently occupied but would be available for June 1, 2015. The Tenant states that they did not view this unit at the time but that they filled out an application for unit #14 and agreed to the rent and security deposit terms. The Tenant states that they were told they would be given the keys after they paid the security deposit and first month’s rent. On May 20 and May 29 the Tenants paid a total of \$1,020.00 to the Landlord by deposit to the Landlord’s account. The Tenant provided copies of bank transaction records for these payments and states that the Landlord was informed after each deposit.

The Tenant states that on June 1, 2015 the Tenants arrived with their belongings to find that the tenants in unit #14 had not moved. The Tenant states that they were told these tenants would move out by June 14, 2015. The Tenant states that the Landlord offered the Tenants an unoccupied suite #10 to store their belongings in the center of the rooms

as the Landlord was still working in repairs to #10 and would need to access the walls. The Tenant states that the belongings were left and the Tenant stayed at her old unit and then stayed with family members. The Tenant states that the Landlord never informed them when the tenants finally moved out of unit #14 and that on June 27, 2015 the Tenants were informed by the Landlord that unit #14 had been rented to a Landlord's family member. The Tenant states that they asked for the return of their monies but the Landlord said nothing. The Tenant states that she moved into unit #10 on July 2 or 3 because she had nowhere else to go and because the Landlord told her they might as well stay as their belongings were already there. The Tenants state that unit #10 is not in the same good condition as unit #14 and that unit #10 is uninhabitable due to mold. The Tenant claims an order of possession for unit #14.

The Landlord agrees that the Tenants asked for unit #14 but that they were told at the time they applied that occupancy of that unit or any unit was based on availability and that unit #14 was occupied. The Landlord states that the Tenants were never told they would get #14. The Landlord states that when informed about the rent and security deposit the Tenants were told they could pick up the keys for unit #10 and they said thank you. The Landlord states that the Tenants viewed unit #10 and accepted the keys to the unit. The Landlord states that he wrote #10 over the application as the Tenants accepted #10. The Landlord states that although he thinks a tenancy agreement was offered to the Tenants he definitely recalls that they would not sign it.

Analysis

Section 54 of the Act provides that a tenant who has entered into a tenancy agreement with a landlord may request an order of possession of the rental unit by making an application for dispute resolution. Section 65 of the Act sets out orders that may be provided where there has been a breach of the Act or tenancy agreement. These orders or remedies do not include an order of possession of a rental unit to the tenant. There is no written tenancy agreement and the Landlord clearly gave contradictory evidence in relation to the offer of a tenancy agreement and the Tenant's refusal. I take this to show a lack of credibility. Overall, I found the Tenant's evidence to be without

contradiction and clear. I therefore accept the Tenant's more believable evidence that the Parties did agree that the Tenant's would rent #14 and that the Tenants only moved into unit #10 as a temporary stay until #14 was available. I find therefore that the Landlord breached the oral tenancy agreement for unit #14 by not providing this unit. However I accept the undisputed evidence that unit #14 is currently in possession of a third party and I cannot make an order that would conflict with the rights of this third party to the unit. As a result I find that the Tenant's claim for an order of possession must be dismissed. The Tenant has leave to reapply for compensation should the Tenant have suffered any losses in relation to the Landlord's breach of the tenancy agreement.

Conclusion

The application is dismissed with leave to reapply for compensation.

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: September 1, 2015

Residential Tenancy Branch

