



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, OPR, OPB, FF

Introduction

In the first application the tenants seek to cancel a one month Notice to End Tenancy. It would appear that an actual Notice in the required form was never served and that the tenants have vacated the premises and so the Notice is no longer in question.

By an amendment contained in their evidence package, the tenants also seek moving expenses, reimbursement for a finder's fee, return of August rent for the lower portion of the rental unit and aggravated damages.

In the second application the landlord seeks an order of possession, however, since bringing her application the tenants have returned possession to her.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that the tenants are entitled to any of the monetary relief requested?

Background and Evidence

I refer to Ms. S. as the landlord because she had all dealings with the tenants.

The rental unit is a six bedroom home. The home includes a self-contained suite in the lower portion. The landlord had apparently rented out each portion separately to different tenants before.

The tenancy started on July 1, 2015. There is a written tenancy agreement but neither side provided a copy. They agree that the tenancy was for “up and down” at the home. The rent was \$3600.00 per month. The term was to July 1, 2016. The landlord received an \$1800.00 security deposit which she still holds. She also received a \$1000.00 pet damage deposit, which the landlord says has been returned to the tenants by registered mail. The tenants have not confirmed receipt as of yet.

The parties fell into dispute immediately.

The landlord relayed various complaints at hearing about the move-in process. They are not relevant to the claims here.

The tenancy agreement apparently listed two dogs as occupying the premises. It is not clear that the agreement restricted the tenants to two dogs, however, the tenants moved in with three dogs and the landlord immediately objected, directing the tenants to get rid of the third dog.

The tenants did not comply immediately and so the landlord attempted to issue a one month Notice to End Tenancy for cause on July 8th. That is the Notice the tenants originally challenged in their application. However, instead of serving the tenants with the statutory form of Notice, she served them with a proof of service document by mistake.

Purportedly in reliance on the idea that the Notice would end the tenancy, the landlord gave notice and showed the premises to prospective new tenants on July 11th and 12th.

The landlord then said she was cancelling the one month Notice.

During this time the tenants were attempting to negotiate a rental of just the upstairs of the home. There was some discussion about it but no agreement. The landlord suggested the tenants just end the tenancy.

On July 20th the parties signed a mutual agreement to end the tenancy effective August 31, 2015. A copy was not provided at this hearing.

The tenants did not pay the August rent. The landlord apparently issued a ten day Notice to End Tenancy for unpaid rent.

The tenants vacated the premises at the end of August.

The landlords' have made a second application, the related file numbered on the front page of this decision. It is to be heard in March 2016. In that application they seek compensation for damage to the premises and for rent.

Analysis

The evidence does not prove that the landlords have done anything of such significance as to justify the ending of the tenancy by the tenants. Indeed, it was ended by mutual agreement.

The tenants' argument seems to imply that the landlords were obliged to change the tenancy agreement to allow the tenants to rent merely the upper portion. I do not find this argument persuasive. The tenants signed the tenancy agreement and they are bound by it. They rented the entire home under one agreement, not two rental units under two agreements. The landlords were not obliged to change it.

The tenants' claim for recovery of the finder's fee they paid someone to locate the rental unit for them and their claim for recovery of August rent (which they did not pay) for the lower portion is dismissed. It has no connection with any act or failure to act on the landlords' part.

It is arguable that the landlord Ms. S. was not justified in showing the premises to prospective tenants for two days in July because the eviction Notice was not actually served. Whether that is the case or not, there is no evidence before me to show that the tenants were somehow disturbed by the showings. It is not apparent that they were even at home at the time of the showings. The purpose of this dispute resolution process is not to penalize parties but to compensate parties for damage suffered. The tenants have not proved damages and I dismiss this item of the claim.

The tenants argue that the landlord attended at the premises too often and as a result they suffered a loss of quiet enjoyment. But for the showings on July 11 and 12, there is no indication when or how often the landlord attended or whether she went past the front door. The landlord says that when she attended it was for a proper purpose, like serving documents.

On this evidence, the tenants have not proved any loss of quiet enjoyment and I dismiss this item of the claim.

Conclusion

The tenants' application is dismissed.

The landlords' application is dismissed as it is redundant.

In the circumstances of this case I decline to award either side recovery of the filing fee.

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 18, 2015

Residential Tenancy Branch

