



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant's application: CNL, MNDC
Landlord's Application: OPL, MND, MNDC, FF

Introduction

This was a hearing with respect to applications by the tenants and by the landlords. The tenants applied to cancel a Notice to End Tenancy for landlord's use and for a monetary award. The landlords applied for an order for possession and a monetary award. The hearing was conducted by conference call. The landlords and the named tenant called in and participated in the hearing.

Issue(s) to be Decided

Should the Notice to End Tenancy dated July 31, 2015 be cancelled?
Are the landlords entitled to an order for possession pursuant to the Notice to End Tenancy?
Are the tenants entitled to a monetary award and if so, in what amount?
Are the landlords entitled to a monetary award and if so, in what amount?

Background and Evidence

The rental unit is a house in Surrey. The landlord testified that the tenancy began for a one year term commencing May 1, 2014. The landlord said that a monthly rent of \$2,500.00 was proposed, but the tenancy agreement specified a monthly rent of \$2,150.00, payable on the first of each month. According to the landlord, the tenant was expected to perform maintenance and make repairs to the rental property as a contribution to the rent; this is why the rent was reduced from \$2,500.00 per month to \$2,150.00 per month. The tenants paid a security deposit of \$1,075.00 at the start of the tenancy. Neither party provided a copy of the original tenancy agreement as part of their documentary evidence. The landlord testified that the agreement continued on a

month to month basis after the expiry of the one year fixed term and no new written tenancy agreement was created. The landlord acknowledged that the rent was increased to \$2,250.00 per month without any written agreement by the tenant approving the increase.

The landlord served the tenant with a two month Notice to End Tenancy for landlord's use. The Notice to End Tenancy was dated July 31, 2015 and it required the tenants to move out of the rental unit by September 30, 2015. The Notice was personally served on July 31st. The reason for the Notice to End Tenancy is that the landlords intend to live in the rental unit. The tenants applied to cancel the Notice to End Tenancy. The tenant testified at the hearing that when the original fixed term tenancy ended the landlord verbally agreed to renew the tenancy for an additional term of one year and increased the rent by \$100.00 per month to \$2,250.00 per month. The tenant said that the landlord told him that he did not need a written agreement for the new term and he gave the landlord post-dated cheques for the rent for the next year of the tenancy.

The tenant said at the hearing that he was hospitalized and recovering from surgery and due to his surgery he has been unable to move from the rental unit. The tenant said that he has made arrangements for new accommodation and intends to move from the rental property by November 1, 2015. The tenant has not paid rent for September or for October. He said that he considers that he is entitled to have the two months free of rent as compensation for having to move from the rental property. In the tenants' application they claimed payment of the sum of \$5,000.00. The tenant said that the \$5,000.00 was compensation for building materials that he purchased pursuant to an agreement with the landlord to make improvements to the rental property.

In addition to seeking an order for possession the landlord requested a monetary award. He claimed payment of \$6,300.00 said to be reimbursement of reduced rent based on his claim that the tenant failed to perform expected minor repairs during the tenancy. The landlord claimed the sum of \$3,500.00 because the tenant was said to have damaged the lawn by parking vehicles on the lawn. The landlord claimed an amount said to be compensation because the tenant sublet a portion of the rental unit without consent. The landlord also claimed unpaid rent for the month of October. The landlord said that he returned the tenants post-dated cheques, including the cheque for October because he expected the tenant to move out at the end of September.

At the hearing the tenant referred to a shed built on the rental property. He said that it had been built with the landlord's consent and he expected the landlord to pay him an amount to compensate him for the cost to construct the shed, or alternatively to give him sufficient time to remove the shed. The tenant said that it was not possible to have

the shed emptied and removed from the property by November 1st. The landlord said that he consented to allow the tenant to construct the shed, but he testified that there was already an existing shed on the property available for the tenant to use. The landlord said that the tenant built the shed to store materials used by the tenant in his construction and renovation business. The landlord has no need for the shed and he expects the tenant to remove it when he moves from the rental property.

Analysis

The parties entered into a fixed term tenancy agreement that commenced on May 1, 2014. The term expired and according to the landlord reverted to a month to month tenancy. The tenant alleges that the landlord gave him a verbal assurance of a further one year term, but no new written tenancy agreement was created and I find that the tenancy became a month to month tenancy. The landlord served the tenant a Notice to End Tenancy for landlord's use. There is no dispute that the landlord intends to reside in the rental unit with his wife when the tenants have vacated. I find that the two month Notice to End Tenancy was given because the landlord intend to reside in the rental unit and I find that the tenants have not established that there are valid grounds to cancel the Notice. The tenants have made arrangements to move from the rental unit by November 1, 2015 and I find that the landlord is entitled to an order for possession effective that day. This order may be filed in the Supreme Court and enforced as an order of that court.

The tenant has claimed a monetary award for moving costs and compensation for building materials said to have been supplied pursuant to an agreement with the landlord to perform repairs and improvements to the rental property. The Notice to End Tenancy has been confirmed and there is no basis for the tenant's claim for moving costs. He received compensation in the form of one month's free rent for the month of September as required by the *Residential Tenancy Act*. The hearing was principally concerned with the validity of the Notice to End Tenancy and I have not addressed the tenants' claim for compensation for materials supplied for repairs and improvements to the rental property; this portion of the tenant's claim is dismissed with leave to reapply.

The landlord has also claimed a monetary award for damage to the rental property, but I find that the landlords' claim for damages or repair costs is premature because the tenancy will not end until November 1, 2015. The landlords' claim for damage to the rental property is dismissed with leave to reapply.

The landlord has not established any basis for an award for damages because the tenants allegedly sublet a portion of the rental unit without the landlords' approval; this claim by the landlord is dismissed without leave to reapply.

The tenants have not paid rent for September or for October. I have determined that the tenants were entitled to receive September free of rent as compensation for the two month Notice to End Tenancy. The landlord has claimed a monetary award for unpaid rent for October. I find that the landlord is entitled to recover the rent for October, but I find that the amount should be reduced by the sum of \$400.00, being the amount of the unauthorized rent increase of \$100.00 per month charged by the landlord for the four month period from May, 2015 to and including August, 2015. I allow the landlords' claim for unpaid rent for October in the amount of \$1,750.00. The landlords are entitled to recover \$50.00 of the \$100.00 filing fee for a total award of \$1,800.00 and I grant the landlords an order under section 67 in the said amount. This order may be registered in the Small Claims Court and enforced as an order of that court.

Conclusion

The tenants' application to cancel the Notice to End Tenancy for landlord's use has been dismissed. The landlord has been granted an order for possession effective November 1, 2015. The landlord has been granted a monetary award of \$1,800.00.

The tenant's claim for compensation for materials has been dismissed with leave to reapply and the landlord's claim for compensation for damage to the rental property has been dismissed with leave to reapply. All other monetary claims are dismissed without leave to reapply. The security deposit will be dealt with in accordance with the *Residential Tenancy Act* after the tenancy ends on November 1st.

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: October 23, 2015

Residential Tenancy Branch

