Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, OPC, OPB, MNR, MNSD, MNDC, FF, O

Introduction

This hearing dealt with applications brought by both parties. The tenants applied for an order setting aside a notice to end this tenancy and an order compelling the landlords to comply with the Act and the landlords applied for an order of possession, a monetary order and an order authorizing them to retain the security deposit. Both parties participated in the conference call hearing with the landlords being represented by their agent, JW.

At the hearing, the parties agreed that the tenants vacated the rental unit and returned possession to the landlord on September 30, 2015. As the issue of the continuance of the tenancy is rendered moot by the end of the tenancy, I consider the tenants' claim application and the landlord's claim for an order of possession to have been withdrawn. The hearing dealt exclusively with the landlord's claim for a monetary order and retention of the security deposit.

Issues to be Decided

Are the landlords entitled to a monetary order as claimed?
Should the landlords be permitted to retain the security deposit?

Background and Evidence

The facts themselves are not in dispute; it is the parties' respective interpretations of the facts that led to this dispute. The tenancy began on August 1, 2014 at which time the tenants paid a $600.00 security deposit. Rent was set at $1,200.00 per month, payable in advance on the first day of each month. The parties signed a tenancy agreement which established a fixed term beginning on August 1, 2014 and ending on July 31, 2015 after which the tenancy would continue on a month-to-month basis.

The parties communicated primarily through email. On July 17, the landlord's agent JW emailed the tenants to advise that the tenancy would need to end because they would

be moving into the unit on September 1. The tenants immediately responded to this email by advising that the landlords could not end the tenancy before the end of September and included with their email screenshots from the Residential Tenancy Branch website dealing with 2 month notices to end tenancy (section 49). JW responded on July 20 to state that because the lease had expired, only one month was required and indirectly suggesting that the lease was not ending for one of the reasons permissible under section 49.

The tenants did not pay rent in August and on August 2, sent the landlords an email advising that the July 17 email was not a valid section 49 notice. JW responded to this email the following day and stated that "we agree October 1st is the appropriate timeframe." The tenants paid rent for the month of September and vacated the unit on September 30, 2015.

The tenants took the position that the July 17 email was a legal section 49 notice and that they were entitled to withhold rent for the month of August because it was possible that they may have found alternative accommodation in that month and they wanted to ensure they received the compensation to which they felt they would be entitled. The landlords took the position that they did not end the tenancy for one of the reasons stated under section 49, but because the strata rules governing the building in which the rental unit is situated only allowed them to rent under certain circumstances which they did not believe would continue past the end of the lease. The landlords further took the position that they had a binding agreement in place with the tenants that the tenancy would end on September 30 as this was the date the tenants advised a section 49 notice would take effect.

The landlords seek to recover unpaid rent for August, $200.00 in costs which represent recovery of their $50.00 filing fee plus the costs of preparing for arbitration and indicated that they may be subject to fines by the strata corporation as the tenants did not vacate by September 1 as required. The landlords withdrew the claim for September rent and prospective bailiff costs.

Analysis

The landlord is the estate of the owner and the representative of that estate is the son of the decedent. The July 17 email from the landlords specifically stated that the son intended to move into the rental unit. This is one of the grounds for a section 49 notice and I find it is this statement that led the tenants to believe that their tenancy was ending pursuant to section 49.

Although the landlords believed they could terminate the tenancy at any time after July 31 on one month's notice, the Act does not permit them to do this as they are only allowed to unilaterally end the tenancy under the reasons provided under sections 46, 47 or 49 of the Act. The fact that the landlords may have lost the strata council's permission to rent the unit to a third party does not constitute grounds to end the tenancy under the Act. It was incumbent on the landlords to create a term of the tenancy that ended with the expiry of the council's permission to tenant the unit and this term should have required the tenants to move out at the end of the term with the possibility of renewal should the strata agree to an extension. The fact that the landlords failed to properly secure the tenants' agreement to an absolute end of the tenancy when they signed the tenancy agreement did not give them the right to unilaterally end the tenancy end the tenancy for a reason other than one enumerated by the Act. Section 5 of the Act provides that parties may not contract out of their obligations under the Act.

I believe the tenants were justified in their belief that the tenancy was ending because the son intended to reside in the rental unit as the July 17 email specifically stated this. However, the tenants acknowledged that the email was not a valid notice effective to end the tenancy and stated this in their August 2 email. Rather than insisting that the landlord comply with the law, the tenants chose to withhold rent in the mistaken belief that upon receiving an *invalid* notice to end their tenancy, they could withhold rent at any time. In my view, because the tenants were well aware that the email was ineffective to end their tenancy, they did not have the right to assume that they could receive compensation on the basis of that ineffective notice. Even if the email had been valid and effective to end the tenancy, section 51 of the Act specifically states that the tenants may only withhold rent in the *last* month of the tenancy and I find that they were not under any circumstances authorized to withhold rent in the month of August.

After the tenants failed to pay their rent, the landlords served on the tenants a 10 day notice to end tenancy and I find that they had grounds to end the tenancy for unpaid rent. Although the parties agreed to come to an amicable solution and set the end of tenancy date as September 30, I find that the tenancy ended pursuant to the 10 day notice to end tenancy and *not* because of the July 17 email. I find that the tenants were not entitled to withhold rent and that the landlords are entitled to recover the unpaid rental arrears. I award the landlords $1,200.00.

As the landlords have been successful in their claim, I find they should recover the $50.00 filing fee paid to bring their application and I award them $50.00 for a total entitlement of $1,250.00. I dismiss the claim for an additional $150.00 in costs

preparing for arbitration as under the Act, the only litigation-related expense I am empowered to award is the cost of the filing fee.

The landlords had reserved the right to claim against the tenants any strata fines levied as a result of the unit having been tenanted in the month of September. At the hearing, the agent indicated that as of the date of the hearing, no fines had yet been levied. That part of the application is dismissed with leave to reapply. However, I note that given the landlords' failure to create a tenancy agreement which would allow them to comply with the strata rules and bylaws, it may be difficult for the landlords to prove that the tenants should be held responsible for these costs.

The landlords have been awarded a total of $1,250.00. I order the landlords to retain the $600.00 security deposit in partial satisfaction of the claim and I grant them a monetary order under section 67 for the balance of $650.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenants' claim was withdrawn. The landlords will retain the security deposit and are granted a monetary order for $650.00.

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 13, 2015

Residential Tenancy Branch