



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1049019 B C Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPT

Introduction

This hearing dealt with an application by the applicants, hereinafter referred to as the tenants, for an order of possession. Both parties appeared. No issues regarding service or the exchange of evidence were identified.

Issue(s) to be Decided

Are the tenants entitled to an order of possession and, if so, on what terms?

Background and Evidence

The tenants testified that sometime in November 2015 they completed an application for tenancy to start December 1. A few days later they were advised that their application had been accepted so they returned to the landlord's office with the Shelter Information form from the Ministry. Copies of the completed Shelter Information forms were filed in evidence by the tenants. The forms were signed by DA, on behalf of the landlord on November 7.

The Shelter Information forms are dated stamped as being received by the Ministry on November 9.

A cheque for the female tenant's security deposit was issued by the Ministry on November 10. The tenant filed a copy of that cheque into evidence.

The female tenant testified that they went back to the landlord to pay the deposit. At first she testified that they were told that the building had changed hands and they had to get the cheques re-issued in the name of the new owner. Later she testified that she had a cheque and the male tenant had cash. The landlord would not accept the cash at that time because they wanted the security deposit paid in full at one time.

The tenant testified that at this meeting, which was with a young woman named MH, they also signed a tenancy agreement. She said MH signed the tenancy agreement but did not give them a copy of it.

The tenant testified that later that day they received a call from another woman who told them that their application for tenancy had not been approved and that MH had been fired. The tenant did not recall the date on which this occurred.

The resident manager testified that the building was sold effective November 1, 2015 and his employment started November 12. He had no interaction with the tenants. He has checked the files and the only document on the file is the Shelter Information Form. The witness testified that if an application for tenancy is not approved the application is shredded.

DA also testified. He has worked in this building for about eight years. He remembers the tenants coming in with the Shelter Information form, signing it, and giving it back to the tenants. He does not recall any other documentation being signed at that time.

DA testified that he recalls seeing an application for tenancy from the tenants and subsequently hearing that they had not been approved. He said their usual procedure is to complete the tenancy agreement after the application for tenancy has been approved and he is sure that a tenancy agreement was never completed.

DA also testified that MH was the eighteen-year-old daughter of the previous owner and her employment only lasted about two weeks.

The tenants argued that their application for tenancy had to be approved before they could do the Shelter Information form.

After the tenants were told that they had not been approved they told the Ministry to cancel any payments to the landlord. They put their belongings into storage, at some cost to themselves. Ultimately they found a new place for December 1 but it is not as nice as this rental unit.

Analysis

On any application the burden of proof is on the applicant to prove their claim on a balance of probabilities.

The evidence in this case is very slim.

The Shelter Information form is only for the purpose of arranging the payment of rent and security deposit from the Ministry to or on behalf of the recipient. The document states very clearly that it is not a tenancy agreement. Accordingly, it provides evidence that the tenants made arrangements for payment of rent and the security deposit but nothing more.

That leaves the tenants' assertion that they signed a tenancy agreement and the landlord's assertion that a tenancy agreement was not signed. After much consideration I cannot find any reason to prefer the evidence of one party over the other. That means that the applicants have not provided sufficient evidence to tip the balance of probabilities in their favour. Accordingly, I dismiss their application.

Conclusion

The application is dismissed for the reasons above.

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: January 29, 2016

Residential Tenancy Branch