



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, OPB, MNR, MNDC, FF, O

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlords on February 16, 2016. The Landlords applied for an Order of Possession for the use of the property and for a breach of the agreement. The Landlords also applied for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), to recover the filing fee from the Tenant, and for “Other” undisclosed issues.

The Landlords’ daughter appeared as the agent on behalf of the Landlords. The Tenant also appeared for the hearing. Both parties provided affirmed testimony. The Tenant confirmed receipt of the Landlords’ Application and documentary evidence by registered mail. The Tenant confirmed that she had not provided any evidence prior to the hearing.

The parties were provided with instructions for the hearing and no questions were asked of the hearing process. The parties were given the opportunity to present their evidence and make submissions to me and to cross examine the other party on the evidence presented.

Preliminary Issues and Findings

At the start of the hearing, the parties confirmed that the Tenant, who was originally the owner of the rental unit, had sold the property to the Landlords and the sale of the property had completed on October 30, 2015 as per the sale documents the Landlords had provided for this hearing. However, the Tenant wanted to remain in the rental unit after the purchase of the home was complete as the home she was intending to purchase had been delayed. Therefore, the parties agreed that the Tenant would rent the home for three and half months starting on November 1, 2015 to February 15, 2016. The parties added this tenancy onto an addendum to the sales contract. The addendum states that the Tenant would be responsible to pay rent in the amount of \$3,000.00 per

month will be paid to the Landlords by deducting this amount from the purchase price. No security deposit was requested but the Tenant was responsible for paying utilities.

The Landlords' agent confirmed that the Tenant failed to vacate the rental unit on February 15, 2016 as per the addendum document which detailed the end of tenancy date. The Landlord testified that, understanding that there was no requirement for the Tenant to have to vacate the rental unit after the fixed term ended because the agreement did not provide for this, the Tenant was served with a 2 Month Notice to End Tenancy for Landlords' Use of Property (the "Notice"). The Notice was not provided into evidence prior to this hearing, but the Landlord confirmed that it was dated February 20, 2016 with a vacancy date of April 26, 2016. The reason for ending the tenancy was because the rental unit will be occupied by the Landlords.

The Landlords' agent testified that since February 15, 2016, the Tenant has failed to pay rent for the tenancy and as a result, the Landlords seek to claim \$22,000.00 in unpaid rent from the Tenant. This amount was based on a fair market rent amount than what the Tenant was paying in rent. However, the Landlords' agent acknowledged that the rent amount cannot be changed during a tenancy contrary to the Act and understood that it would only remain at \$3,000.00 per month as per the tenancy agreement. The Landlords' agent amended her Application to include the correct amount of unpaid rent due of \$7,500.00 and then reduced this amount to \$4,500.00 after taking into consideration the one month's rent compensation payable to the Tenant under the Notice. The Landlords' agent confirmed the request for an Order of Possession pursuant to the vacancy date of the Notice.

The Tenant confirmed that she had entered into a tenancy with the Landlords after they had purchased the rental property from her and the sale had completed at the end of October 2015. The Tenant did not dispute that there was a tenancy in place but testified that the Landlords had been harassing her since this time to get out of the property. The Tenant understood that as she had been given the Notice she had until the end of April 2016 to vacate the rental unit. The Tenant also confirmed that she had not paid rent for the tenancy since February 15, 2016 because the Landlords would not accept the rental amount that was payable under the tenancy.

The Tenant confirmed receipt of the Notice and confirmed the testimony of the Landlords' agent with respect to the details on the Notice. The Tenant testified that she would be vacating the rental unit on April 30, 2016 and acknowledged that, pursuant to the compensation payable under the Notice, the remaining balance of unpaid rent for the tenancy was \$4,500.00.

The parties agreed and acknowledged that the tenancy would end at the end of April 2016 pursuant to the Notice and the Tenant stated that she was going to pay the Landlords \$4,500.00 in unpaid rent forthwith after this hearing.

As the parties agreed to the contents of the Notice which was before them both at the time of this hearing, I asked the Landlord to fax me a copy of the Notice pursuant to Rule 3.19 of the Rules of Procedure. I have examined the Notice and I find the contents of and form of the Notice comply with Section 52 of the Act. I also find that the vacancy date on the Notice is corrected to April 30, 2016 pursuant to Section 53 of the Act.

Based on the testimony and evidence of the parties above, I find that after the rental property was sold by the Tenant to the Landlords at the end of October 2015, the parties engaged into a tenancy agreement. Although this was not recorded in a separate tenancy document and the rent payable was deducted from the sale price, I find these factors were not sufficient for me to find that a tenancy was not established between the parties and neither did the parties argue or make any submissions in respect to the fact that there was no tenancy in this case. As the Tenant testified that she was going to move out of the rental unit pursuant to the Notice and pay the unpaid rent, I dismiss the Landlord's Application to recover the filing fee.

Conclusion

Based on the foregoing, I find the Landlords are entitled to an Order of Possession which was effective on April 30, 2016 and a Monetary Order for \$4,500.00 in unpaid rent. The orders provided to the Landlord which accompany their copy of this Decision are enforceable and binding on the parties. This file is now closed.

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: April 11, 2016

Residential Tenancy Branch