



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF, OLC, RP

Introduction

This is an application brought by the tenant(s) requesting an Order canceling a Notice to End Tenancy that was given for landlord use, requesting an Order for the landlord to comply with the Act, Regulation, or tenancy agreement, and requesting the landlord to make emergency repairs for health or safety reasons. The applicants are also requesting recovery of their filing fee.

Some documentary evidence and written arguments have been submitted by the applicants prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All parties were affirmed.

Issue(s) to be Decided

The issues are:

- Whether or not to cancel or uphold a Notice to End Tenancy that was given for landlord use.

- Whether to issue an Order for the landlord to comply with the Residential Tenancy Act, Regulation, or tenancy agreement.
- And whether to issue an Order for emergency repairs.

Background and Evidence

The parties agree that this tenancy began on October 1, 2015 with a monthly rent of \$2600.00 due on the first of each month.

The parties also agree that on February 20, 2016 the landlords personally served the tenants with a two month Notice to End Tenancy for landlord use giving the following reasons:

- The rental unit will be occupied by the landlord or the landlords spouse or close family member of the landlord or the landlords spouse.
- The landlord has all necessary permits and approvals required by law to demolish the unit or repair the rental unit in a manner that requires the rental unit to be vacant.

At the beginning of the conference call the applicants stated that they have a fixed term tenancy agreement with an end of tenancy date of September 30, 2016, however they would be willing to move at the end of April 2016 if the landlords agreed to the following conditions:

- The landlords will pay their moving costs of \$3806.42.
- The landlords will pay any increase in the monthly rent that they may have to pay in a new rental unit, until the end of their fixed term lease.
- The landlords will pay for any hookup charges for utilities.
- The landlords will pay for the cost of having their mail forwarded.
- And the landlords will pay for the cost of packing boxes.

The landlords stated that they are not willing to accept the tenants offer to vacate at the end of April 2016, as they find it excessive, and they would prefer to allow this tenancy to continue until the end of the lease. The landlord further stated that they are willing to withdraw their Notice to End Tenancy.

The tenant stated that they are not willing to compromise on their requests to the landlord to vacate at the end of April 2016, and therefore they will stay until the end of their lease; however they are requesting that the landlord do plumbing repairs as they believe that there is still a problem with the septic pump, and they are also having electrical issues in the rental unit.

The landlords denied that there is any problem with the septic pump stating that it was repaired by the restoration company after it failed two months ago, and they are not aware of any electrical issues.

Analysis

The tenants had been requesting that a Notice to End Tenancy for landlord use be canceled, however, as stated above, the landlords withdrew that notice at the hearing and therefore it's my finding that that notice may no longer be used to end this tenancy.

The tenants also requested an Order for plumbing and electrical repairs, however the tenants have provided no evidence in support of the need for plumbing or electrical repairs, and the landlords deny that there is a problem.

The burden of proving a claim lies with the applicant, and when it is just the applicants word against that of the respondents that burden of proof is not met. In this case it is just the applicants word against that of the respondents, and, in the absence of any supporting evidence, it's my finding that the tenants have not met the burden of proving their claim that repairs to the plumbing and electrical are required.

I therefore will not issue any Order for repairs.

I will allow the tenants request for recovery of their filing fee however, because the landlord did not withdraw the Notice to End Tenancy until after the tenants had applied for dispute resolution.

Conclusion

It is my finding that, because the landlords withdrew their two month Notice to End Tenancy, that the notice is now void.

The applicants request for emergency repairs is dismissed with leave to reapply.

Pursuant to section 72 of the Residential Tenancy Act, I have issued an Order for the landlord's to pay \$100.00 to the tenants for recovery of their 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: April 12, 2016

Residential Tenancy Branch

