



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, LRE, AAT, LAT, RR, CNL, MND, FF

Introduction

The tenant originally applied for an order that he be given possession of the rental unit and related relief. Since making the application he has obtained possession but has received a two month Notice to End Tenancy. By amendment to his application the tenant seeks to cancel that Notice and for compensation incurred for alternate accommodation and for income lost while dealing with the issues.

The hearing of this matter started on June 28 and continued on July 5.

All parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Does the relevant evidence presented during this hearing show on a balance of probabilities that there are valid grounds for the Notice to End Tenancy? Have the landlords' actions or inactions caused the tenant a claimable loss?

Background and Evidence

The rental unit is a two bedroom "plus den" suite in the lower portion of a house. The rental unit is shared accommodation with one other tenant of the landlord.

The tenancy was scheduled to start on June 1, 2016, however the tenant paid a security deposit of \$220.00 to Mr. C. on May 24 and was given a key to move in. The tenant gave notice at his then current residence and took steps to move in.

On May 25 he had an interaction with the landlord Ms. C. She formed the view that he was not yet a lawful tenant. It appears that the tenant was barred access and asked to leave.

A dispute arose. The tenant rented a hotel room pending resolution of that dispute. Each side took advice, resulting in the landlords acknowledging the tenancy, apologizing, and paying the tenant \$2000.00 based on an accounting the tenant had provided. They sent the money to the tenant on June 4 and invited him to move in on June 6.

The landlords also made an offer to the tenant to pay him an additional \$3000.00 if he agreed not to move in; to give up his tenancy. Their June 4 correspondence containing the offer also notified him that they were trying to sell the house and, as well, that Mr. C.'s parents were coming to occupy the basement suite in the summer so they would soon have to give the tenant a "60 days' notice" to vacate for the end of August, though his last month's rent would be free.

The tenant decided to forego the \$3000.00 offer and move in. His move in was delayed until June 8 because he had rented a hotel room for a fixed period until then.

On June 8 the landlords served the tenant with the two month Notice to End Tenancy.

The listed grounds for the Notice were that the rental unit will be occupied by a close family member of the landlord and that the landlord has all the necessary permits and approvals required by law to demolish the rental unit, or renovate or repair the rental unit in a manner that requires it to be vacant.

The landlord Mr. C. testifies that his parents come from abroad every year. In the past he had normally just informed the tenants in the lower suite verbally that they would need to move out and that is what they did. He was, until this dispute, ignorant of the residential tenancy laws that he is obliged to obey.

Mr. C. says his parents will live in the basement suite for at least one year. He says that the suite will have to be renovated and that he has a permit from the local government dated April 29, 2016 to renovate and convert the suite.

The tenant is of the view that the landlords' two month Notice is an invention to evict him and that the idea of the landlords' parents moving in is a recent idea.

He says that he has lost significant work time having to attend for advice about the various aspects of this dispute at the Residential Tenancy Branch. He is a health care worker and has had to book off time at work. He calculates his lost wages to be \$226.00 according to his June 14 claim amendment and an additional \$186.32 according to his June 21 claim amendment.

He says that as the result of the landlords' initial actions, even after the resolution and payment of the \$2000.00 on June 4, he had booked a series of days in a hotel and thus incurred that cost regardless of whether or not he stayed at the hotel. He produced a hotel receipt in the amount of \$572.70 incurred for the nights of June 6 and 7.

Analysis

I find the tenant and the testifying landlord Mr. C. to be credible witnesses.

It has not been shown that vacant possession of the rental unit will be required for the renovation work and so the ground for the two month Notice alleging that the landlords intend to renovate in a manner that requires vacant possession is a ground that must fail. The Notice cannot stand on this ground alone.

I accept Mr. C.'s testimony that, as in the past, his parents will be coming from abroad for a lengthy stay in the basement suite and that some work has to be done to prepare the suite.

I accept his evidence that this has been a regular occurrence in the past without complaint from previous tenants who had to move out to accommodate him.

The landlords' intention regarding the suite was made clear in their email to the tenant on June 4, during the \$3000.00 negotiations. At that time it was stated that if the tenant moves in, a notice to end the tenancy would be given for the end of August to accommodate Mr. C.'s parents arrival. This communication corroborates the landlords' intention.

For these reasons I find that the two month Notice to End Tenancy is a valid Notice. It will result in the ending of this tenancy on August 31, 2016.

Pursuant to s. 55 of the *Residential Tenancy Act* the landlords are entitled to an order of possession for that date.

I dismiss the tenant's claim for hotel costs. By June 6, the date he secured the hotel, he had been aware for two days that he could move back into the rental unit.

His reason for delay was that he wished to obtain advice from the Residential Tenancy Branch. Obtaining advice is always a very good idea, but it cannot be at the expense of the other side to the dispute. In this case, the tenant's caution was not unreasonable, but it cannot be at the expense of the landlords.

I must also dismiss the tenant's claim for work loss. Frequently, anyone involved in a dispute resolution, whether at this level or in a court, misses work; either attending a hearing or obtaining advice. Such a loss is not generally awardable except in the most extreme situations, for example; where the other sides conduct is such as to justify an award of exemplary damages. I find no such conduct on the part of the landlords in this case. Rather, I am satisfied that though they failed to inform themselves of their legal obligations as landlords, they have acted in good faith attempting to resolve the problem they created.

Conclusion

The tenant's application is dismissed. The landlords will have an order of possession effective August 31, 2016.

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: July 06, 2016

Residential Tenancy Branch