



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding M.A. Cedar Place Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPL MNR FF OLC O

Introduction

This hearing convened pursuant to applications by the tenants and the landlord. The tenants applied for an order that the landlord comply with the Act, regulation or tenancy agreement. The landlord applied for an order of possession as well as for a monetary order for unpaid rent. The tenants and the landlord's agent participated in the teleconference hearing.

I determined that the issue of the notice to end tenancy took precedence, and only considered that issue. I will address the remainder of the landlord's application in the conclusion of my decision.

Issue(s) to be Decided

Is the notice to end tenancy for landlord's use dated May 31, 2016 effective as of July 31, 2016?

Background and Evidence

The tenancy began on March 1, 2014. The tenancy agreement indicates that the tenancy is for a fixed term of 60 months, ending on February 28, 2019.

On May 31, 2016 the landlord served the tenants with a notice to end tenancy for landlord's use. The notice indicates that the reason for ending the tenancy is that the landlord intends to occupy the rental unit. The effective date of the notice is July 31, 2016.

On September 15, 2016 the tenants filed an application seeking an order that the landlord comply with the Act, regulation or tenancy agreement. The tenants submitted that the landlord has been harassing them and attempting to illegally evict them.

On October 19, 2016 the landlord filed their own application for an order of possession pursuant to the notice to end tenancy for landlord's use dated May 31, 2016. In the hearing the landlord stated that the new landlord wants all tenants to sign a new tenancy agreement, but these tenants refused. The landlord now wants to occupy the tenants' unit. The landlord alleged that the tenants altered their tenancy agreement, and therefore their fixed-term tenancy agreement is void and the tenants are in a month-to-month tenancy. The landlord pointed out that in the tenants' version of the agreement they changed the amount of the security deposit from \$1,000.00 to \$2,000.00 and they changed the date of signing the agreement from March 3, 2014 to September 3, 2014.

The tenants stated that they originally signed a one-year tenancy agreement, but they were then told that the landlord was selling the building, so they asked if they could have a five-year fixed term instead. The landlord agreed, and the tenant signed the new agreement on September 3, 2014. The tenants stated that their security deposit was \$2,000.00, and the current landlord changed it to \$1,000.00 on their copy of the agreement.

I note that the fixed-term clause on both versions of the agreement is identical.

Analysis

Upon consideration of the relevant evidence, I find that the tenancy agreement is not void. The date upon which the tenants signed the tenancy agreement does not void the agreement, and I accept the tenants' testimony as plausible regarding the change in dates. I find that it is not necessary for me to determine at this time whether the tenants paid a security deposit of \$1,000.00 or \$2,000.00. However, I note that it does appear that the landlord, not the tenants, changed the amount of the deposit on the tenancy agreement. In particular I find that the term indicating that the tenancy is for a fixed term ending February 28, 2019 is valid. Therefore, the soonest time that the notice to end tenancy for landlord's use could be valid is at the end of the fixed term, February 28, 2019. The landlord is not entitled to an order of possession for the notice to end tenancy at this time.

As the landlord's application was not successful, they are not entitled to recovery of the filing fee for the cost of their application.

Conclusion

The tenants are currently in a fixed term tenancy that will end on February 28, 2019. The landlord may not end the tenancy with a two-month notice to end tenancy for

landlord's use until that date. The landlord's application for an order of possession is dismissed with leave to reapply.

I did not consider the landlord's application for monetary compensation, and that portion of their application is dismissed with leave to reapply.

The tenants' application is also dismissed with leave to reapply. The tenants may also apply for monetary compensation.

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: November 10, 2016

Residential Tenancy Branch