



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, OLC, MNDC

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel a Mutual Agreement to End the Tenancy
- b. A monetary order in the sum of \$705.81

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing and the Amendment to the Application for Dispute Resolution was served on the landlord by mailing, by registered mail to where the landlord resides. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenants are entitled to an order cancelling a Mutual Agreement to End the Tenancy?
- b. Whether the tenants are entitled to a monetary order and if so how much?

Background and Evidence

On February 15, 2014 the parties entered into a tenancy agreement that provided that the tenancy would start on March 1, 2014 and continue on a month to month basis. The rent was \$825 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$412.50 at the start of the tenancy.

In August 2014 the parties entered into an employment contract dated September 1, 2016 in which VE agreed to act as the resident caretaker and perform certain duties. The employment contract was described as an employment-at-will contract and it referenced the Employment Standards Act.

The landlord testified he became dissatisfied with the work of the caretaker and her assistant. A new caretaker was hired in late July and moved into the rental unit at the end of July. The landlord testified the work was between the new caretaker and the applicant was shared in August 2016. The landlord testified there was an oral agreement the applicants would be paid half of the salary. The applicants dispute this.

On September 4, 2016 the applicants gave the landlord notice they were resigning as a caretaker. .

On September 30, 2016 the landlord gave the applicants a one month Notice to End Tenancy on the basis that the apartment was necessary to house a caretaker. The landlord testified he needed the rental unit for a new caretaker.

In early October the tenants approached the landlord and requested that the landlord give them more time to move. There was an exchange of e-mails and the parties negotiated a form of Mutual Agreement to End the Tenancy. The tenants requested that the landlord include a provision in the Mutual Agreement that the Notice to End Tenancy as to be voided. The landlord agreed and the parties signed a Mutual Agreement to End the Tenancy on November 30, 2016 provided the Tenants gave a one month Notice or on December 31, 2016. There is an exchange of e-mails which indicate both tenants were agreeable.

The tenants testified they have been unable to find alternative accommodation at a price they are able to pay.

On October 28, 2016 the tenants filed the within application. They seek to cancel the Mutual Agreement to End the Tenancy and monetary order.

Analysis – Application to cancel the Mutual Agreement to End the Tenancy:

The tenants testified they seek an order to cancel the Mutual Agreement to End the Tenancy for the following reasons:

- It was obtained under duress. They felt pressured and intimidated into signing the agreement.

- They have since looked at their tenancy agreement and employment contract and believe the landlord would not have been successful in obtaining an Order for Possession on the basis that the landlord needed the rental unit for a caretaker. They do not believe there are grounds to end the tenancy.
- They disputed many of the allegations that were made with respect to their employment relationship.
- At the time they signed the agreement they were not able to find their copy of the tenancy agreement and employment agreement. They requested copies of the landlord but the landlord failed to provide them with copies before they signed the Mutual Agreement.
- At the time they resigned there were other apartments available for a new caretaker.
- They do not feel they have done anything wrong.

After carefully considering all of the evidence I determined there is no basis for an order to cancel the Mutual Agreement to end the Tenancy for the following reasons:

- I do not accept the submission of the tenants that they signed the Mutual Agreement under a type of duress recognized by law to be sufficient to set aside the contract.
- The Mutual Agreement was entered into after the tenants requested more time. It was negotiated and the Tenants were successful in including additional terms into the agreement.
- The negotiation took place by e-mail over a couple of days. It was signed by the Tenants on October 4 and the landlord on October 5.
- The landlord compromised its position in coming to this agreement and consented to voiding the Notice to End Tenancy.
- The tenants complained they did not have copies of the tenancy agreement and employment contract. It was open to them to delay signing it until they received copies.
- There are good policy reasons for enforcing mutual agreement such as this.

As a result I dismissed the tenants' application to cancel the Mutual Agreement to End the Tenancy. The tenancy shall come to an end on December 31, 2016.

The Residential Tenancy Act provides that where an arbitrator has dismissed a tenant's application to cancel a Notice to End Tenancy, the arbitrator must grant an Order for Possession. In this case the application was to cancel a Mutual Agreement to End the Tenancy. I determined that I do not have jurisdiction to issue an Order for Possession

as the tenant's application was not to cancel a Notice. Had the landlord filed an application an Order for Possession would have been issued.

Tenant's Application for a Monetary Order

I dismissed the tenants' application for a monetary order. The tenants claimed \$651.09 for the 50% reduction of pay for August. This is an employment issue and not a residential tenancy matter. There is an employment contract which incorporates the Employment Standards Act. The employment agreement does not provide that the income is to be applied against rent. I determined I do not have jurisdiction to make a monetary award for any loss of income. In coming to this conclusion I have not made a determination as to whether the applicant is entitled to the amount claimed on the merits. I dismissed the claim of \$54.72 for the "Wanted to Rent" advertisement as the landlord is not responsible for this claim.

Conclusion

In conclusion I dismissed the Tenants application to cancel a Mutual Agreement to End the Tenancy and a monetary order.

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: December 16, 2016

Residential Tenancy Branch