



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR

Introduction

This is an application brought by the landlords requesting a monetary order for \$2200.00 and requesting recovery of the \$100.00 filing fee.

Some documentary evidence and written arguments has been submitted by the parties 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 issue is whether or not the applicants have established a monetary claim against the respondents, and if so in what amount.

Background and Evidence

The landlords testified that they entered into a rental agreement with the tenants in September of 2012 for a monthly rent of \$1100.00.

The landlords further testified that the rental unit had been for sale in 2016 and on June 28, 2016 they gave the tenants a letter stating that the rental unit had sold and they were giving the tenants two months' notice to vacate. (A copy of this letter is included in the file)

The landlords further testified that the tenants insisted they wanted something on an official document, and therefore, at the tenant's insistence, a mutual agreement to end the tenancy on August 31, 2016 was signed on June 29, 2016.

The landlords further testified that the tenant subsequently gave them a notice that they wanted to vacate the rental unit on July 31, 2016. This notice was received on July 21, 2016.

The landlords further stated that the tenants did subsequently vacate the rental unit on July 31, 2016, however not all of their belongings were removed from the yard of the property until August 12, 2016.

Landlords further stated that the tenants have refused to pay any rent for the month of July 2016, or the month of August 2016, even though the mutual agreement to end tenancy was for the end of August 2016.

The landlords further stated that, originally they had been asking for both the July 2016 and August 2016, rent however right now they would be satisfied with just an order for the outstanding July 2016 rent.

The tenants testified that, on June 28, 2016, the landlords gave them a two month Notice to End Tenancy, stating that the property had sold.

The tenants further testified that they spoke with the Residential Tenancy Branch and were told that if the landlord gives a 2 month Notice to End Tenancy due to the sale of the property they were entitled to the equivalent of one months free rent.

The tenants further testified that they subsequently gave the landlords 10 days notice that they would be moving on July 31, 2016, and therefore their last month rent for the month of July 2016 is considered their free month rent.

The tenants further testified that they vacated the rental unit on July 31, 2016, except for a few things that were left in the yard of the property, however the purchases requested that they remove those items, and therefore those items were removed by August 12, 2016.

The tenants therefore believe that they should not have to pay any rent as they vacated July 31, 2016, and therefore July 2016 should be their free months rent.

The tenants agree that they did sign a Mutual Agreement to End Tenancy, however it was only because the landlords had not given them the two month notice on the proper form, and the mutual agreement was signed just to assure the landlords that they would vacate by the date requested by the landlords.

Analysis

Section 49 of the Residential Tenancy Act does allow the landlord to end the tenancy if the property has sold, and in this case the property did sell, and the landlords did give the tenants written notice to end the tenancy because the property had sold. The notice was not given in the form required under the Residential Tenancy Act, however that was the landlord's error and not the tenants, and is my finding that the landlords are still bound by the conditions of the Residential Tenancy Act that relate to a notice given under section 49.

Section 51 of the Residential Tenancy Act states:

51(1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) **may withhold the amount authorized from the last month's rent** and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

In this case therefore it is my finding that the tenants did have the right to withhold the last month rent as compensation for the section 49 Notice to End Tenancy

Further, section 50 of the Residential Tenancy Act states:

50(1) If a landlord gives a tenant notice to end a periodic tenancy under section 49 [*landlord's use of property*] or 49.1 [*landlord's notice: tenant ceases to qualify*], **the tenant may end the tenancy early by**

(a) **giving the landlord at least 10 days' written notice** to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and

(b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.

(2) If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.

(3) A notice under this section does not affect the tenant's right to compensation under section 51 [*tenant's compensation: section 49 notice*].

Therefore, in this case, since the tenants did give the landlords 10 days notice that they would be vacating by July 31, 2016, the tenants did have the right to vacate the rental unit on that date, and since the tenant still had the right to the one month compensation the tenants were entitled to withhold the July 2016 rent.

The landlords have stated that the tenants did not vacate fully until August 12, 2016 as there were some belongings still in the yard of the rental property, however it's my finding that for the purposes of the Act, the tenants vacated on July 31, 2016.

It is my decision therefore that I will not allow the landlords claim for any further rent.

Conclusion

This application is dismissed in full without leave to reapply.

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: January 30, 2017

Residential Tenancy Branch