



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, FF

Introduction

The tenants apply to recover rent paid after giving notice to end a tenancy early upon receipt of a two month Notice to End Tenancy.

Issue(s) to be Decided

Are the tenants entitled to recover overpaid rent for a time following the end of the tenancy? When did the tenancy end?

Background and Evidence

The rental unit is a one bedroom condominium apartment. There is a written tenancy agreement between the parties showing that the tenancy starting July 1, 2016 for a one year term to June 30, 2017 at a monthly rent of \$1250.00. The tenants paid a \$600.00 security deposit. Its repayment has been resolved.

The tenant Ms. K. testifies that the landlord issued a two month Notice to End Tenancy in December 2016 for the tenants to vacate February 28, 2017. She says that the February rent was paid but the tenants exercised their right to end the tenancy earlier and gave notice on January 30 that they would be leaving immediately. The tenants seek February rent paid for the period following ten days after their notice: \$850.00.

The landlord testifies that the tenants agreed to leave at the end of February and gave only one day's notice before they left.

Analysis

A landlord may end a tenancy under s. 49 of the *Residential Tenancy Act*, for only limited reasons, for example, where the landlord wishes to occupy the premises herself. Such a notice may not end the tenancy earlier than the fixed term in the tenancy agreement.

To end a tenancy in this manner a landlord is required to issue a Notice in the statutory form. A tenant receiving such a Notice is entitled to challenge it or, if accepted, to end the tenancy earlier than the date in the Notice, by giving the landlord at least ten days written notice.

In this case there is no two month Notice in the statutory form. There is but an email from the landlord dated December 22, summarizing recent discussions and noting the parties' agreement to end the tenancy on February 28, without penalty and that the landlord would pay \$1250.00 to help with moving costs. The email requests that the tenants respond with their agreement, which the tenants did on December 25.

This email exchange shows that the parties reached a mutual agreement to end the tenancy. The tenants were not being forced to vacate as the result of a two month Notice to End the Tenancy in the statutory form.

For this reason the tenants were not at liberty to give their own ten day notice to end the tenancy earlier and were responsible for the February rent.

Conclusion

The tenants are not entitled to receive any February rent back from the landlord and their application must be dismissed.

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 11, 2017

Residential Tenancy Branch