



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR, CNC, FF, LRE, MNDC OLC, PSF, RP, RR

Introduction

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

- a. An order authorizing the Tenants to change the locks to the rental unit.
- b. A monetary order in the sum of \$7956.
- c. An order to suspend or set conditions on the landlord's right to enter the rental unit.
- d. An order that the landlord comply with the Act, regulations and/or tenancy agreement.
- e. A Tenant Order of Possession.
- f. An order to recover the cost of the filing fee?

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 was sufficiently served on the Landlord as the landlord acknowledged receipt of the document.

Issues to be Decided

The issues to be decided are as follows:

- a. Whether the tenants are entitled to an order authorizing the Tenants to change the locks to the rental unit.
- b. Whether the tenants are entitled to a monetary order in the sum of \$7956.
- c. Whether the tenants are entitled to an order suspending or setting conditions on the Landlord's right to enter the rental unit.
- d. Whether the Tenants are entitled to an order that the landlord comply with the Act, regulations and/or tenancy agreement
- e. Whether the tenants are entitled to a Tenant's Order of Possession?
- f. Whether the tenants are entitled to recover the cost of the filing fee.

Background and Evidence:

The rental unit is a 5 bedroom house on a ½ acre lot. The landlords' purchased the property in November 2017 with the intention of re-developing it.

The tenants testified they have entered into an oral contract for the rental of the rental unit for a rent of \$1000 per month for 50 year term. The tenants gave the following evidence

:

- On November 28, 2017 they were driving past the house when they saw the "For Rent" sign on the property. They called the telephone number and arranged to view the property the next day.
- On November 29, 2017 they had an opportunity to view the house and spent a lengthy period of time inside. The landlord had provided them with a key as he had to take someone for a medical appointment.
- They testified they offered to rent the rental unit for \$1000 per month for a 50 year term and the landlord agreed. They also got the landlord's agreement they could live in the rental unit for the first month free of charge in exchange for cleaning it. They told the landlord they had cats and the landlord stated that was okay and they did not need to provide a security deposit.
- As a result of the agreement they started cleaning the next day.
- They subsequently discovered the landlord had barred entry to them and they could not gain access.
- The landlord refused to return their text messages. Eventually the landlord told them that he talked to his brother and his brother wanted \$2200 in rent.
- They had arranged for movers but had to cancel the movers.
- The landlord refused to return their telephone calls and text messages.

The landlord gave the following testimony:

- At no time did he agree to rent the rental unit to the Tenants. At no time did he agree to rent the rental unit for a 50 year term at a rent of \$1000.
- The rental unit was previously rented for \$2800 per month.
- They purchased the property with the intent to re-develop it. It is ludicrous to think that the landlord would rent the property for a rent and term alleged by the Tenants.
- The allegation that a landlord would rent a 5 bedroom house for a rent of \$1000 per month for a 50 year term is not logical.
- The landlord failed to provide documentary evidence for the hearing. However landlord gave oral testimony that the tenant subsequently e-mailed him asking whether the landlord was still interested in renting it to them, his response indicating the rent would have to be \$2200 per month and the tenant's responding asking whether they would accept \$1200 to \$1400 per month. The tenants did not dispute this oral testimony. The landlord submits this indicates no agreement was made.
- The landlord dispute the rental unit needed cleaning.

- The landlord testified the reason he did not return the Tenants' calls in early December was because he was out of town.
- The landlord testified they intend to demolish the house in 6 months and re-develop the property.

Analysis

Section 4 of the Residential Tenancy Act provides as follows:

What this Act does not apply to

4(i) This Act does not apply to

- (i) living accommodation rented under a tenancy agreement that has a term longer than 20 years,

It is unclear why the Tenants filed the within Application for Dispute Resolution. If the tenants' testimony is accepted there would be a lease for a term of 50 years at \$1000 per month.

Section 4(i) provides that the Residential Tenancy Act does not apply to a tenancy agreement that has a term longer than 20 years and I would not have jurisdiction. If the landlord's evidence is accepted that there was no agreement and I would have to dismiss the tenants' application.

In *Faryna v. Chorny*, [1952] 2 D.L.R. 354, the B.C. Court of Appeal set out the following test for assessing credibility:

"The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carries conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. (page 357)"

After carefully considering all of the evidence I determined the Tenants failed to prove the parties entered into a tenancy agreement for the following reasons:

- I prefer the evidence of the landlord to that of the Tenants. While the tenants may have thought the landlord was prepared to agree to rent the rental unit for \$1000 per month for a term of 50 years they failed to provide sufficient evidence to prove the landlord agreed to this. The landlord denies this and there is insufficient evidence to dispute the landlord's testimony..

- The tenants' testimony of a lease for a term of 50 years is not consistent with the age of the house and the evidence of the landlord that they intended to demolish the house within 6 months and re-develop the property.
- The tenants' testimony of the rental of a 5 bedroom house for a rent of \$1000 per month is not consistent with the preponderance of probabilities of what the parties might recognize as reasonable in the circumstances for a house such as this.
- Further, it is not reasonable to expect a landlord would enter into such a longer term lease with no provision for increasing the rent.
- The tenants did not dispute the landlord's oral testimony of the exchange of e-mails where the landlord proposed rent of \$2200 per month and the tenants responding asking whether they (the landlord) would accept \$1200 - \$1400 per month).

After considering all of the evidence I determined Tenants failed to prove the parties entered into a tenancy agreement as alleged by the Tenants. All of the claims brought by the Tenants are dismissed without leave to re-apply.

Conclusion

I ordered that all of the claims brought by the Tenants are dismissed without leave to re-apply.

This decision is final and binding on both parties.

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 22, 2018

Residential Tenancy Branch