



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Maple Leaf Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPT, FFT

Introduction

This hearing dealt with a tenant's applications for an Order of Possession for the subject rental unit. Both parties appeared or were represented at the hearing and had the opportunity to be make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

I confirmed the landlord was in receipt of the tenants' hearing package, including supporting documents. I confirmed with the landlord's agent that the landlord had not submitted or served any evidence prior to the hearing and intended to rely upon oral submissions and the documents submitted by the tenants.

The hearing process was explained to the parties and the parties were permitted the opportunity to ask questions.

Issue(s) to be Decided

1. Are the tenants entitled to an Order of Possession?
2. Recovery of the filing fee.

Background and Evidence

It was undisputed that the tenants and the landlord's agent executed a written tenancy agreement on December 12, 2018 for a rental unit in a multiple unit building that was under construction at that time. At the time the tenancy formed the landlord had drawings of the various units available for rent in the building and it was anticipated that occupancy would be available by July 1, 2019.

The tenancy agreement executed by the parties on December 12, 2018 reflects the following key terms:

- The tenancy would commence on July 1, 2019.

- The tenants would be required to pay rent of \$2,905.00 plus \$100.00 for parking on the first day of every month.
- A security deposit of \$1,425.50 was required.

It was undisputed that the tenants paid the security deposit in the amount of \$1,425.50 on December 12, 2018.

An occupancy permit was not obtained by July 1, 2019 and the parties agreed to extend the commencement of the tenancy until an occupancy permit was obtained. On July 26, 2019 an occupancy permit was issued for the property. Also on that date the landlord communicated to the tenants, via email, that *"in preparation for move-in to [name of property] our accounting department has reviewed each of the rental files. In the case of your lease, we have found a discrepancy in the documentation. The rent for [subject rental unit] is \$3,905.00 rather than \$2,905.00."* The landlord indicated in the email that the tenants may have possession of the subject rental unit if the tenants agreed to amend the tenancy agreement to reflect a monthly rent of \$3,905.00 for the rental unit; or, the tenants may enter into a tenancy for one of three other rental units still available; or, terminate the tenancy agreement of December 12, 2018.

The tenants were not agreeable to any of the options proposed by the landlord on July 26, 2019 and proceeded to file this Application for Dispute Resolution.

The tenants are of the position they have a legally binding tenancy agreement and it did not contain any "discrepancy in the documentation". The tenants submitted that at the time of entering into the tenancy agreement the landlord sought a monthly rent of \$2,905.00 and the tenants agreed to pay that amount. The tenants suggested that the landlord is attempting to increase the monthly rent obligation because market rents have increased since they entered into the tenancy agreement. The tenants seek an Order of Possession effective immediately as they sold their former home in anticipation of moving into the subject unit and are currently homeless.

The landlord's agents testified that in seeking a monthly rent of \$2,905.00 in December 2018 the landlord had relied upon drawings provided by the developer. However, at around the same time the occupancy permit was issued the landlord inspected the property and realized that the balcony of the subject unit was much larger than the landlord expected. The landlord is of the position that with a balcony so large the rent should have been set at \$3,905.00 per month in December 2018. The landlord denied that the market rent for the unit has increased since December 2018.

The landlord's agent confirmed that the party named as the landlord in this case is the owner of the property.

The landlord did not call the developer to testify or submit evidence to demonstrate the drawings the developer provided to the landlord were inaccurate. I noted that the tenants had provided

drawings of the subject rental unit and other units located on the same floor of the building. The drawings appear to depict the rental unit had a balcony and a large patio since the rental unit is located on the fourth floor.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

Section 54 of the Act provides the circumstances where a tenant may seek an Order of Possession. I have reproduced section 54 below:

Order of possession for the tenant

- 54** (1) A tenant who has entered into a tenancy agreement with a landlord may request an order of possession of the rental unit by making an application for dispute resolution.
- (2) The director may grant an order of possession to a tenant under this section before or after the date on which the tenant is entitled to occupy the rental unit under the tenancy agreement, and the order is effective on the date specified by the director.
- (3) The date specified under subsection (2) may not be earlier than the date the tenant is entitled to occupy the rental unit.

In this case, it is undisputed that the parties entered into a tenancy agreement; the commencement date for the tenancy has passed; and, the landlord has not yet provided the tenants with possession of the rental unit. Accordingly, I find the tenants have a basis for seeking an Order of Possession under section 54 of the Act.

Upon review of the tenancy agreement executed by the parties on December 12, 2018, I do not see any obvious error or inconsistency with respect the amount of rent payable. It is undisputed that the amount of rent recorded in the tenancy agreement is the amount of rent sought by the landlord when the tenancy formed and the amount the tenants agreed to pay to the landlord. I also note that the security deposit required by the landlord and paid by the tenants is one-half of \$2,905.00, which is the statutory maximum for security deposits, and I find it further supports my finding that the landlord sought a monthly rent of \$2,905.00 for the unit when the tenancy formed in December 2018.

While the landlord was unable to provide the tenants with occupancy of the unit on July 1, 2019 because the landlord did not yet have an occupancy permit for the unit, it is apparent to me from the email communications between the parties that the tenants were agreeable to and have been waiting for possession of the rental unit to be provided to them. From what I see, the only reason the landlord has not provided the tenants with possession of the rental unit is because

the landlord seeks to increase the monthly rent to \$3,905.00 rather than the \$2,905.00 that was agreed upon.

The landlord put forth a position that the large size of the balcony was “missed” when the landlord determined the market rent for the rental unit when the tenancy formed in December 2018 as the landlord was relying upon drawings the developer supplied to the landlord. I am of the understanding that the drawings were given to the landlord by the developer and relied upon by both parties in making their respective decision to enter into a tenancy agreement. Accordingly, I find that both parties undertook a risk to negotiate an agreement based on drawings rather than a finished product and there is no evidence to suggest the parties relied upon different drawings. While the landlord did not produce corroborating evidence to demonstrate the developer’s drawings were inaccurate, I am of the view that IF the drawings provided to the landlord by the developer were inaccurate and the inaccuracy causes the landlord to suffer damages then the landlord may have recourse is against the developer, but not the tenants. To seek recourse against the tenants, by denying them possession of the unit unless they agree to pay an additional \$1,000.00 per month, would result in the landlord transferring the landlord’s loss to the tenants yet the tenants did not have an agreement with the developer. Alternatively, if it was the landlord that failed to take into account the size of the balcony/patio for the subject rental unit when they negotiated this tenancy based on the drawings, I find that is their failure and the landlord must bear the consequences of their own failure. Therefore, I accept the tenants’ position that they have a binding tenancy agreement.

Not only do I find the parties had a binding tenancy agreement in place, I also find the landlord’s actions to be egregious. The landlord is the owner of the property and I am of the view the landlord knew, or ought to have known the size of the balcony/patio for their own property under construction. Also, the landlord did not review the tenancy agreement they had in their possession since December 2018 until the day the tenants were to be provided possession of the rental unit. Then, the landlord withheld possession of the unit from the tenants unless they agreed to pay a significant increase. The tenants may be entitled to compensation from the landlords due to the landlord’s refusal to provide the tenants with possession of the rental unit; however, the tenants have not sought monetary compensation with this decision other than the filing fee. Therefore, the only Monetary Order I issue with this decision pertains to the filing fee.

With this decision I provide the tenants with an Order of Possession that shall be effective IMMEDIATELY upon service of the Order to the landlord.

The tenants are awarded recovery of the \$100.00 filing fee they paid for this application. The tenants are provided a Monetary Order in the amount of \$100.00 to serve and enforce upon the landlord. The tenants are authorized to satisfy this Monetary Order by deducting \$100.00 from a month’s rent and in doing so the landlord must consider the rent to be paid in full.

Conclusion

The tenants are provided an Order of Possession effective IMMEDIATELY upon service of the order to the landlord.

The tenants are awarded recovery of the filing fee. The tenants are provided a Monetary Order in the amount of \$100.00. The tenants are authorized to satisfy the Monetary Order by deducting \$100.00 from a month's rent payment.

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: August 13, 2019

Residential Tenancy Branch