



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Glassman Investment Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPT

Introduction

This hearing dealt with a tenant's application for an Order of Possession for the rental unit.

Both the landlord's agent and the tenant appeared for the hearing. The parties were affirmed and the parties were ordered to not record the proceeding. Both parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

I heard the tenant served his proceeding package and evidence upon the landlord on May 3, 2021. The landlord served its evidence upon the tenant on May 10, 2021. This hearing was scheduled on an urgent basis which in turn did not leave the parties very much time to serve evidence. Neither party requested an adjournment to have more time to review the materials of the other party. The tenant indicated he had reviewed the landlord's evidence and he was prepared to respond to it. As such, I admitted the parties' respective hearing materials into evidence and considered them in making this decision.

Issue(s) to be Decided

Is the tenant entitled to an Order of Possession for the rental unit?

Background and Evidence

The tenant viewed the subject rental unit and on April 6, 2021 and he signed a tenancy application, a tenancy agreement, and gave the building manager a cheque for the security deposit in the amount of \$795.50.

The following day the landlord's agent reviewed the tenancy application and decided to proceed to enter into a tenancy agreement with the tenant. The landlord's agent signed the tenancy agreement and deposited the tenant's security deposit cheque. I cautioned the landlord's agent during the hearing that taking a security deposit before forming a tenancy violates section 20 of the Act and that having a prospective tenant sign a tenancy agreement before the landlord determines whether it will proceed with the tenancy may be viewed as unconscionable. The landlord's agent indicated she understood and would review its practices.

The tenancy agreement signed by both parties reflects a tenancy for the subject rental unit set to commence on May 1, 2021 and the tenant would be required to pay rent of \$1595.00 per month.

It is undisputed that the tenant has not been provided possession of the rental unit and the tenant seeks to gain possession of the rental unit. The landlord does not intend to give the tenant possession of the rental unit. Below, I have provided the parties respective positions.

The tenant is of the position he has a tenancy agreement for the subject rental unit and the landlord is denying him possession. The tenant testified that he got a copy of the tenancy agreement in mid-April 2021 after making requests to the landlord a number of times. The tenant submitted that approximately one week before May 1, 2021 the tenant called to get instructions for moving in and the landlord informed him he would not be moving in. The tenant stated the landlord did not provide him a reason and hung up on him. On May 1, 2021 the tenant went to the property to try to gain possession of the rental unit and the building manager refused to give him possession. The tenant took a video recording of the events on May 1, 2021 and provided it with his evidence.

The landlord's agent acknowledged that the parties formed a tenancy on April 7, 2021; however, the landlord's agent testified that the tenant had called her on the telephone on April 9, 2021 to tell her he had measured the rental unit during a second visit to the rental unit and that it would be too small for his furniture so he wanted to cancel the tenancy agreement. According to the landlord's agent, the landlord's agent told the tenant to put the request for cancellation in writing. The tenant also asked the landlord's agent whether they had any larger units available for rent and the landlord's agent suggested the tenant look at their website. According to the landlord's agent, the tenant proceeded to send her an email on April 9, 2021 and April 13, 2021 to seek cancellation of the tenancy agreement and request return of his security deposit. Below, I have

reproduced the content of the email of April 9, 2021 and April 13, 2021 (with unit number, names and email addresses obscured by me for privacy purposes):

From:
Sent: April 13, 2021 12:05 PM
To:
Subject: Re: St.

Please confirm you received my email and that when I can pick up my check.

On Fri, Apr 9, 2021 at 15:48 wrote:

It was a pleasure speaking with you. I did measurements of the unit . after my application was approved but the size right under 500 sqf and does not fit my furnitures. Please cancel my application and issue a refund of my deposit.

Regards,

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April 9, 2021

In addition to the email, the landlord's agent submitted the tenant also telephoned the landlord's office numerous times requesting return of his security deposit. The landlord's response to the tenant's email and phone calls was that the landlord would deal with the security deposit once the unit was re-rented. During the hearing, I cautioned the landlord that security deposits are to be administered in accordance with section 38 of the Act and the time limit for dealing with a security deposit is not dependent on the landlord re-renting a unit.

The landlord submitted that the tenant had applied for tenant for other rental units the landlord manages but on April 22, 2021 the tenant called the landlord again to say he wanted the subject rental unit. The landlord's agent told the tenant it had already been re-rented.

The landlord's agent acknowledged that they did not refund the security deposit despite re-renting the unit for May 1, 2021. The landlord's agent alleged the tenant broke the window at the landlord's office and they were holding the security deposit as a partial offset to their losses related to the broken window. The landlord's agent stated the alleged damage is the subject of an upcoming criminal court matter. The tenant denied breaking the window. I declined to hear anything further on this matter as it is before the courts.

The tenant denied cancelling the tenancy agreement or requesting return of the security deposit orally over the phone or in emails. The tenant was of the position the emails presented by the landlord as evidence are fraudulent and were not from him. The

tenant pointed to his tenancy application to show he has a different email address than that appearing in the emails provided by the landlord as evidence. The tenant suspects the landlord was motivated to cancel his tenancy because the rent for the subject unit went up approximately \$300.00 per month and because he complained the unit was smaller than the landlord had represented. The tenant is of the position that he must still have a tenancy for the subject rental unit because the landlord gave him a copy of the signed tenancy agreement.

The landlord's agent denied fabricating emails and pointed out the tenant's emails followed his verbal statements to her that he wanted to cancel the tenancy agreement. The landlord also asserted that the tenant requested return of the security deposit numerous times. The landlord's agent recognizes that the tenant listed a different email address on his tenancy application; however, when the tenant applied to rent other units the landlord manages the tenant used various email addresses. The landlord's agent denied the rental unit was re-rented for \$300.00 more and stated the rental unit was re-rented for the same amount the tenant was going to pay. The landlord's agent stated the tenant apparently wants a larger unit and larger units are more expensive. The landlord provided the tenant with a copy of the signed tenancy agreement because he requested it and he is entitled to the document but that does not change the fact the tenant requested cancellation of the tenancy agreement and the landlord acted upon his request.

The tenant acknowledged that the rental unit is likely re-rented and he stated he would be willing to accept a different rental unit from the landlord in settlement of this matter. The landlord responded that it will not be entering into any other tenancy agreement with the tenant.

Analysis

The tenant seeks an Order of Possession for the rental unit pursuant to section 54 of the Act, which provides:

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.

It is undisputed that the parties entered into a tenancy agreement for the subject rental unit and under that tenancy agreement the tenant was to be provided possession of the rental unit on May 1, 2021. It is also undisputed that the landlord has not provided the tenant with possession of the rental unit. It was undisputed that neither party delivered a proper notice to end tenancy to the other party. It was also unopposed that the rental unit has been re-rented to other tenants.

At issue is whether the tenant made representations to the landlord that he sought to cancel the tenancy agreement and the landlord acted upon those representations.

Section 91 of the Act provides that the common law applies to landlords and tenants, except where modified or varied under the Act. The doctrine of estoppel exists in the common law, including estoppel by representation.

Estoppel by representation is a positive representation made by a party and where the other party acts upon the representation it would be inequitable for the party making the representation to dispute it or do anything inconsistent with it.

The landlord asserted that the tenant represented to the landlord that he wished to cancel the tenancy agreement orally, over the phone, and by way of emails he sent to the landlord and the landlord acted upon these representations and proceeded to seek and secure new tenants for the rental unit. The tenant denied this to be true and claims the landlord has fabricated the evidence. Accordingly, I proceed to analyse the parties' respective positions and evidence to determine whether the tenant is estopped from obtaining an Order of Possession for the rental unit.

Upon consideration of everything before me, I find it likely, on a balance of probabilities, that the tenant represented to the landlord that he sought to cancel the tenancy agreement and the landlord acted upon the tenant's representation and proceeded to secure new tenants for the rental unit. I make this finding considering the factors set out below.

The landlord's agent testified that the tenant orally requested to her that the tenancy agreement be cancelled because the rental unit was too small for his furniture. This

submission is consistent with the email of April 9, 2021 the landlord provided as evidence. The landlord's position that the tenant requested cancellation of the tenancy agreement is also consistent with statements made by the building manager to the tenant in the video the tenant made on May 1, 2021 and provided as evidence.

The tenant claims the emails provided by the landlord were fraudulent and pointed to a different email address on his tenancy application; however, I find the landlord reasonably refuted that allegation in testifying that the tenant had used different email addresses when applying for different rental unit the landlord manages. I find the landlord's response to be reasonable because it is not unusual that a person has more than one email address and the tenant did not deny he had made applications for other rental units managed by the landlord.

The tenant claimed the landlord was motivated to end his tenancy and re-rent the unit to others because the landlord raised the rent by hundreds of dollars. The landlord denied that to be true and I find the landlord's testimony that the unit was re-rented for the same amount the tenant had agreed to pay, and that larger units were more expensive, to be more credible. Considering the landlord is a professional property management company, I find it unlikely the landlord would have failed to do market research into the rental rates for its rental units and proceed to enter into a tenancy agreement with the tenant only to do the research afterwards and then fraudulently terminate the tenant's tenancy agreement.

Further, the tenant is of the position that having a copy of the signed tenancy agreement is evidence that he is entitled to possession of the rental unit. I reject that position as it is undisputed the parties did enter into a tenancy agreement and under section 13 of the Act, a tenant is to be provided a copy of their tenancy agreement within 21 days of entering into a tenancy agreement. As such, the landlord was obliged to give the tenant a copy of the tenancy agreement even if the tenancy had been cancelled or otherwise ended.

Given all of the above, I find the landlord has satisfied me that the tenant made representations to the landlord that he sought to cancel the tenancy agreement and the landlord relied upon those representations and rented the rental unit to other people. Accordingly, I find the tenant is estopped from seeking remedy inconsistent with his representations to the landlord and I dismiss his application without leave to reapply.

Conclusion

The tenant's application for an Order of Possession is dismissed 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: June 1, 2021

Residential Tenancy Branch