



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenants: CNL, OLC, FF
For the landlords: OPB, MNR-S, MNDC-S, FF

Introduction

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The tenants applied for the following:

- An order cancelling a Two Month Notice to End Tenancy for Landlord's Use of Property;
- an order requiring the landlords to comply with the Act, Regulation, or tenancy agreement; and
- to recover the cost of the filing fee.

The landlords applied for the following:

- An order of possession of the rental unit based upon an agreement by the tenant to vacate;
- a monetary order for unpaid rent;
- compensation for a monetary loss or other money owed;
- authority to keep the tenants' security deposit to use against a monetary award; and
- to recover the cost of the filing fee.

The listed tenant, the landlords and the landlords' legal counsel (counsel) attended the hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process.

The parties were informed that recording of the dispute resolution hearing is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. In addition, all parties affirmed they were not recording the hearing.

Both parties confirmed receiving the other's evidence and applications in advance of the hearing, presenting no objection to the same. I find the tenants' and the landlords' applications and evidence sufficiently served, in accordance with the Act.

Thereafter all parties were provided the opportunity to present their evidence orally, refer to relevant evidence submitted prior to the hearing, respond to the other's evidence, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters-

Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the parties indicated several matters of dispute on the application, the most urgent of which is the landlord's application seeking an order of possession of the rental unit. Although I will address the tenants' request for an order requiring the landlord to comply with the Act, regulations, or tenancy agreement, I find that the remaining claims on the landlords' application are not sufficiently related to be determined during this proceeding. I will, therefore, only consider the landlords' request for an order of possession. The balance of the landlords' application is dismissed, with leave to re-apply.

I will also consider the parties' respective requests for recovery of their filing fee.

Leave to reapply is not an extension of any applicable time limit.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Are the tenants entitled to an order requiring the landlords to comply with the Act, regulations, or tenancy agreement?

Are the landlords entitled to an order of possession of the rental unit based upon a written agreement?

Is either party entitled to recovery of their filing fee?

Background and Evidence

This tenancy began on July 1, 2019, for a fixed-term through June 30, 2020, and for a monthly rent of \$1,600. The original written tenancy agreement required the tenants to vacate at the end of the fixed-term, with the reason listed as “Landlord Primary Residence”. The rental unit is the upper unit of the residential property. Filed in evidence was a copy of that written tenancy agreement.

On June 30, 2020, the parties signed a new written tenancy agreement on the RTB form, for a tenancy starting on July 1, 2020, and a monthly rent of \$2,050. Directly under this box, the parties are instructed to mark box “A”, “B”, or “C”. In this case the parties marked box “C”, indicating the tenancy was for a fixed-term ending on June 30, 2021. Directly under this term on the tenancy agreement, the parties are instructed to choose and complete box “D” or “E”. In this case, the parties marked box “D”, which reads as follows:

At the end of this time, the tenancy will continue on a month-to-month basis or another fixed length of time, unless the tenant gives notice to end tenancy at least once clear month before the end of the term.

On this clause, the phrase “or another fixed length of” was circled with a handwritten notation above the circled phrase, “another fixed time of 12 mos”.

Additionally, on the written tenancy agreement, although box “D” was marked, there was handwriting in the space for listing the reason the tenant must vacate, under Box “E”, with the notation “Required use of space*”. Box “E” was not marked.

Out to the side of boxes “D” and “E” was another handwritten notation, “This is a (*illegible**) lease of 12 months”. There were initials above this phrase, although I was only able to read what looked to be “LO”. Filed in evidence by the tenants was a copy of the original subsequent tenancy agreement, for a start date of July 1, 2020.

Also filed in evidence was an altered tenancy agreement. In the altered agreement, a bold mark was made to Box “E”, which was still in addition to Box “D” being marked. In the box next to the reason the tenant must vacate, the word “Landlord” was written above the original notation, “Required use of space” as well as the phrase “E prove”.

The undisputed evidence is that the landlord altered the signed written tenancy agreement, after all parties had signed the document, without the consent of the tenants.

Submissions by counsel –

In support of the landlords’ application, the landlords, through counsel, submitted that the tenants communicated with the landlords in May 2020 about extending the tenancy another year, to which the landlord agreed.

Counsel submitted that the parties were unable to meet all together at that time, due to Covid-19, which resulted in the landlords preparing and signing the tenancy agreement and giving the tenants the document to sign. Counsel said the tenants signed and returned the tenancy agreement to the landlord; however, the landlord realized there was a mistake made. Counsel confirmed that the landlord altered the signed tenancy agreement, to reflect the parties’ intentions. Counsel submitted that the landlord would have given the tenants a copy of the altered tenancy agreement, as is their usual practice. The landlord submitted a Statutory Declaration confirming that she “amended” the tenancy agreement as she made a mistake.

In explaining the reason the landlords listed “Require use of space” on the tenancy agreement, counsel said the landlords had a few ideas on what they wanted to do with the property. Those ideas, according to counsel, were that the landlords were thinking of moving in, or selling the property, or renovating their current home to sell and then live in the rental unit during the day.

Tenant’s response –

The tenant denied that the landlords provided them a copy of the altered tenancy agreement, and only found out about it when reviewing the landlords' evidence.

The tenant submitted that the text message evidence on June 8, 2020, filed in evidence, showed that the real intention of the landlord was to sell the property.

The tenant submitted that the landlord asked them to renew the lease, with an increase in the monthly rent from \$2,050 to \$2,900, which they could not afford. When asked to have this request in written form, according to the tenant, the landlord then said the house is being sold. The tenant submitted that their refusal of the rent increase caused the landlord to enforce the vacate clause, which makes it invalid. The tenant submitted that the landlord's changing stories about why they wanted the tenants to vacate left them confused.

Tenants' application –

In support of their application seeking cancellation of the Two Month Notice, the tenant confirmed that the landlords had not served them a Notice. Rather, the landlords' attorney had issued written demands that the tenants vacate.

In support of their request for an order requiring the landlord to comply with the Act, regulations, or tenancy agreement, the tenants submitted that the landlords are wrongfully evicting them because they want more money.

In rebuttal, counsel asserted that the vacate clause was not as clear as it could have been, and although the landlords were not sure how they initially wanted to use the rental unit, they are not certain that they will live there.

At one point, the landlords had different ideas about how they would occupy the spaces.

Analysis

I have considered the relevant evidence of each party and reached a decision taking into account the Act, Regulation, and policy, on the balance of probabilities.

I have considered the landlord's application first.

Landlords' application –

The landlord relies on the second written tenancy agreement on the RTB form, for a tenancy starting on July 1, 2020, and a monthly rent of \$2,050, for a fixed-term ending on June 30, 2021 to support their claim for an order of possession of the rental unit.

For several reasons, I find the requirement that the tenants vacate at the end of the fixed-term, or June 30, 2021, in this tenancy agreement is not enforceable.

The landlords readily acknowledged that they altered and made changes to the written tenancy agreement after the parties negotiated the terms and signed the document. This was to correct a mistake made, according to counsel. I find the unilateral additions by the landlord to a legal agreement, after all parties have signed the document, makes the contract a false document. I therefore find the false document invalidates the term in the contract requiring the tenants to vacate.

Additionally, I find the unilateral alternations made by the landlord to the written tenancy agreement make the contract vague and ambiguous. The parties to this contract were required to check **either** box D **or** E. While the original agreement of the parties had only box D marked, when the landlord made the unlawful alterations to the contract, box E was also marked. I find that where there is ambiguity in the terms of an agreement prepared by a landlord, the contra proferentem rule applies and the agreement must be interpreted in favour of the tenant, in this case. [*My emphasis*]

Apart from that finding, I also find the requirement that the tenants vacate at the end of the fixed-term fails to comply with the requirements of the Act and Regulation 13.1.

The Act and the Regulation allow a landlord to include in a tenancy agreement a requirement that the tenant must vacate the rental unit at the end of a fixed-term if the landlord is an individual and that landlord or close family member intends in good faith at the time of entering into the tenancy agreement to occupy the rental unit at the end of the fixed-term.

Tenancy Policy Guideline suggests that the implication of the word “occupy” means to occupy for a residential purpose, or, in other words, the use the rental unit as living accommodation or as part of their living space.

First of all, the landlord did not state that they would occupy the space, which is a requirement. The landlord merely stated that they required use of the space. This could

be for any reason, such as re-renting at a higher rent or renovating the rental unit, without having to provide the tenants with a Two Month Notice to End Tenancy for Landlord's Use of Property.

I find that this clause does not meet the definition of the word occupy. I find additional support for this finding as counsel said the landlord had a "few ideas" in mind at the time, such as moving-in, selling or renovating the property. The text message by the landlord to the tenant on June 8, 2021, even informed the tenants the landlords were selling the property. I find this substantiates that the landlords did not have a clear intention to occupy the rental unit at the time the tenancy agreement was entered into, June 30, 2020.

For these reasons, I find that the landlord has submitted insufficient evidence that the term in their written tenancy agreement meets their requirement under the Act and Regulation to have the tenants vacate at the end of the fixed-term. I therefore find the vacate clause is unenforceable and as a result, I find the tenancy is now a month-to-month tenancy.

I therefore dismiss the landlord's application for an order of possession of the rental unit, without leave to reapply.

Tenants' application –

The tenant confirmed that they had not received a Two Month Notice from the landlord. I therefore dismiss their request to cancel a Two Month Notice, as there was no Notice to consider, without leave to reapply.

As to the tenants' request for an order requiring the landlord to comply with the Act, regulations, or tenancy agreement, I interpret the evidence of the tenants to show that this request pertains to their position that the landlord increased their monthly rent above the rent increase provisions of the Act. Section 43(5) provides that "If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase".

The undisputed evidence is that the tenants have not been making their monthly rent payments to the landlord due to their belief that they were entitled to withhold payments from rent in order to recover the overpayments. The landlord asserts that the tenants stopped making rent payments in July 2021.

In this case, the tenants did not receive a rent increase notice complying with the yearly allowed amounts. Rather, on June 30, 2020, the parties negotiated a new tenancy agreement and the tenants agreed to pay the rent of \$2,050, beginning on July 1, 2020. I find this was not a rent increase that was imposed by the landlord. I find the parties entered into a new tenancy agreement that replaced the former tenancy agreement, as the parties may and did in fact renegotiate different terms in a new tenancy agreement. This was a fairly negotiated agreement based on the circumstances at the time.

Now that the vacate clause is not enforceable due to my findings, and the tenancy is on a month to month basis, the tenants are not obligated to enter into a new tenancy agreement hereafter. So long as the current tenancy agreement remains in effect, to increase the rent the landlord will have to give the tenants a Notice of Rent Increase in the approved form, with three full months of advance notice, and for an amount that does not exceed that calculated under section 22 of the Regulation.

Based on the above, I find the tenants have failed to prove a violation of the Act by the landlord. Therefore, I dismiss the tenants' claim for an order requiring the landlord to comply with the Act, regulations, or tenancy agreement, without leave to reapply.

As I have dismissed the landlords' claim for an order of possession of the rental unit and I have not considered the merits of the landlord's monetary claim, I dismiss their request to recover the filing fee.

Likewise, as I have dismissed the tenants' application, I dismiss their request to recover the filing fee.

Information to the parties –

For clarity for the parties, the tenants were contractually obligated to begin paying the monthly rent of \$2,050 on July 1, 2020, and to continue each month thereafter, until their rent has increased in accordance with the Act and Regulation.

While I have dismissed the landlord's application seeking monetary compensation for unpaid monthly rent, the dismissal was **with leave to reapply**.

The tenants should be aware that should they fail to pay the rent deficiency owed forthwith, the landlord may serve them with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and to file another application seeking monetary compensation.

Please note that I have not determined or made findings that the tenants owe unpaid monthly rent or the unpaid utility charges, as consideration of that matter on the landlords' application was dismissed, with leave to reapply.

Conclusion

The landlord's application seeking an order of possession of the rental unit based upon an agreement with the tenants is dismissed, without leave to reapply.

The landlord's monetary claim is dismissed, with leave to reapply.

The tenants' application is dismissed, without leave to reapply.

The parties' requests to recover the cost of the filing fee is 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*. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: October 22, 2021

Residential Tenancy Branch