



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPT

Introduction

This hearing convened to deal with the tenants' application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenants applied for an order of possession of the rental unit.

The tenant, ABD, and the landlord/respondent attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. Later in the hearing, tenant, BBD, joined. All parties were affirmed. The landlord confirmed receipt of the tenants' application. The tenants' evidence was attached to the tenants' application.

The parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

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 gain possession of the rental unit in question?

Background and Evidence

With their application, the tenants asserted that they had entered into a tenancy agreement with the landlord and have not been given access to the rental unit.

In their application, the tenants wrote the following:

*On 08-31-22 (*landlord name*) agreed to rent us the house and asked for security and pet deposit via email transfer and that she did not have the lease on her but would send it via email that evening. I stated to (*landlord name*) that I would prefer to give her a cheque that day and e-transfers for rent going forward and she agreed. I wrote her a cheque for 4200.00, pet and security and she accepted the check during the viewing. 3 days later she had not sent the lease, and stated shes no longer leasing to us.*

[Reproduced as written except for anonymizing personal information to protect privacy]

The tenants submitted that they met with the landlord, who represents the owners of the residential property, on August 31, 2022, to view the home. The tenants submitted that they came to an agreement that they would begin the tenancy, starting October 15, or November 1, 2022. Tenant ABD testified later that the start date was October 1, 2022.

The tenants submitted that on the day they met at the rental unit around 7:30 am, the landlord asked for the first month's rent, the security deposit and pet damage deposit, totalling \$4,200, by e-transfer. The tenants submitted that they offered to pay the funds by cheque that day as it was with them, and going forward, they would pay by e-transfer. The tenants asserted the landlord accepted the \$4,200 cheque and they did not force the landlord to take the cheque, with the understanding the landlord would send the written tenancy agreement by email.

Afterwards, according to the tenants, they were told by the landlord via text message on September 3, 2022 that they would not be getting the rental unit.

The tenants submitted that the landlord has not returned the cheque of \$4,200, and that she left it with her friend's husband's sister. The tenants denied having been given the cheque.

The tenant submitted that the landlord indicated she wanted to start the tenancy by October 1, 2022 ideally, as the landlord told them the owners did not want to miss out on rent for October. The tenant submitted that date was agreeable and that the landlord was to send them a tenancy agreement to sign.

Tenant, BBD, explained that they need the rental unit as she has co-founded a non-profit company in the area and has to live there for work.

Filed evidence from the tenants included text messages between the parties and the cheque register from the bank account showing the payment of \$4,200.

Landlord's response –

The landlord submitted that she represents the owners. The landlord submitted that the rental unit was not ready at the time she met with the tenants and is still not ready to be occupied. Therefore, it would be difficult to know when the rental unit would be ready, but no longer wants to rent to these tenants. The landlord submitted that the owners are not ready to commit to a tenancy now, due to the undergoing renovations, which include a new kitchen, bathroom work, and a new, en-suite bathroom. The landlord submitted that it is quite difficult to find local tradespeople for contractor work and that there is no local plumber. The landlord said that they had hoped the rental unit would be ready for October 1, 2022.

The landlord said that she met with the tenants at the rental unit on August 31, 2022, not September 1, 2022. The landlord submitted that one of her other tenants, K, reached out to her about the tenants, and that the rental unit was never advertised for rent. The landlord asserted that the tenants forced her into taking the \$4,200 cheque and denied there was a tenancy agreement between the parties.

The landlord submitted that she also told the tenants that she, as an agent, has ongoing rental vacancies and she told them to check back with her; however, they never did during this time.

The landlord said that the \$4,200 cheque was written on a company's account, and that she returned the cheque to the house one of her other tenants, K, the company's co-founder.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In order for the applicant/tenants to succeed in this application, the applicant/tenants must show that the Residential Tenancy Act applies. In order to find the Act applies, I must be satisfied that the parties entered into a tenancy agreement.

Section 1 of the Act defines a tenancy agreement as an agreement, **whether written or oral, express or implied**, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

This section, in part, also defines a landlord as the owner, the owner's agent or anyone who on behalf of the landlord permits occupation of the rental unit under a tenancy agreement.

Based on the totality of the evidence, I find that a tenancy was created between the tenants and the landlord, the agent of the owners, in this case for a start date of October 1, 2022, based upon the testimony and the text message from the landlord to the tenants. The text message chain shows that the tenants were asking to negotiate a different tenancy start date after the agreement was formed; however, the landlord text messaged the tenants in response and said, "I will see if that works with the owners, they may want to have it rented on Oct 1 as they may not want to lose that income".

I further find evidence that a tenancy agreement formed between the parties as the landlord accepted the first month's rent of \$2,100 and a security deposit and pet damage deposit totalling \$2,100, for a total of \$4,200. I find the landlord's statement that the tenants forced her into taking a \$4,200 cheque does not make sense and I find it not believable.

There is no evidence before me to support that the landlord has entered into a new tenancy agreement with anyone else. Based on the evidence, I find it reasonable to

conclude that the owners or landlord simply changed their mind about renting the rental unit. The landlord submitted the incomplete renovations prevented the rental unit being ready for occupancy, however, there was no evidence before me from the landlord that the rental unit is currently undergoing repairs or renovations. Without this evidence, the rental unit could simply be in the same state as when the tenants first viewed the rental unit and found it acceptable.

For this reason, I find there is insufficient evidence to support that the rental unit is uninhabitable.

I find that section 54 of the Act applies, which states:

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.

I also find there was insufficient evidence that the landlord has ceased acting as an agent for the owners and the testimony of the landlord indicated that she was still currently representing the owners. The owners were not present to provide testimony otherwise.

For this reason and in consideration of the evidence, as I have found sufficient evidence that a tenancy was created and that the tenants have been denied possession of that rental unit, pursuant to section 62(3) of the Act, I order the landlord to give the tenants access and exclusive possession of the rental unit, by 1:00 pm on November 1, 2022.

To give effect to this order, I grant the tenants an order of possession for the rental unit, **effective on November 1, 2022, at 1:00 pm**. The order of possession must be served to the landlord for enforcement purposes, if necessary.

I further order the landlord to prepare a written tenancy agreement for this tenancy, with the required standard terms, reflecting a tenancy start date of November 1, 2022, monthly rent of \$2,100 and a security deposit of \$1,050 and pet damage deposit of \$1,050.

Conclusion

The tenants' application is fully successful.

The tenants have been granted an order of possession effective **November 1, 2022, at 1:00 pm**. The landlord must be served with the order of possession for enforcement purposes, if needed.

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(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: October 19, 2022

Residential Tenancy Branch