



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **OPT**

Introduction

This hearing dealt with an application by the tenants pursuant to the Residential Tenancy Act (“Act”) for orders as follows:

- An order of possession pursuant to section 54 of the Act

Both parties attended the hearing with the landlord represented by an agent SA, while the tenants DP and SD appeared for themselves. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The hearing was conducted by conference call. The parties were reminded to not record the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the Act.

Issue(s) to be Decided

1. Are the tenants entitled to an order of possession?

Background and Evidence

A tenancy agreement was signed by the parties whereby the tenants were to take possession of the rental unit on March 8, 2023. Rent was \$2,500.00 per month due on

the first day of the month. The landlord took a security deposit of \$1,250.00 from the tenants. The landlord returned the security deposit to the tenants on March 8, 2023 and did not allow the tenants to take possession of the rental unit on March 8, 2023.

The tenant SD stated that he met with the landlord on March 7, 2023. He received a tenancy agreement and was instructed by the landlord to have the other tenant sign the agreement and return it to the landlord the morning of March 8, 2023. The tenants signed the tenancy agreement March 7, 2022, but the landlord had not received the copy with the tenants' signatures when she chose to end the tenancy and return the security deposit. The landlord advised the tenants the morning of March 8, 2023 that she had decided not to rent the rental unit to the tenants and returned the security deposit to them.

The landlord stated that the reason she decided not to honour the tenancy agreement was because the landlord learned from an individual through Facebook on March 7, 2023 that the tenants were evicted from their last residence. The tenants did not inform her of that. The landlord had also been asked by the tenants if another individual could move in as well who was not listed on the agreement. The landlord was concerned that the tenants were going to violate the terms of the tenancy agreement. The landlord stated that while she was learning of the tenants' previous eviction, the security deposit was directly deposited into the landlord's account by etransfer. The etransfer happened on the evening of March 7, 2023. The landlord's etransfer system accepts automatic deposits so she had no ability to refuse the security deposit.

The tenants stated that they did not tell the landlord that they had been evicted from their previous residence. At the time they were discussing the new tenancy with the landlord, they did not know had been evicted from his previous residence. They stated that they had a disagreement with their previous landlord but did not give the landlord any information about why their previous tenancy ended. The tenants further stated that they did advise the landlord on March 7, 2023 that they had been evicted after the landlord had agreed to rent to the tenants, and the landlord stated at that time that she would have to trust them. The tenants stated that the previous tenancy was ended as a result of a decision by the RTB.

Analysis

RTB Rules of Procedure 6.6 states, "The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that

the facts occurred as claimed. The onus to prove their case is on the person making the claim.”

Section 16 of the Act states:

16 The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

The landlord and tenants entered into a tenancy agreement based on selective information provided by the tenants to the landlord about their previous tenancy. I find that the tenants deliberately withheld information about the reason their last tenancy ended. I find that the tenants were disingenuous in stating that they were unaware that their previous tenancy had ended by eviction. If the previous tenancy was before the RTB for consideration, I find that the tenants were likely aware of that. Additionally, the tenants were seeking a new place to live and I find that they were doing so because they knew or were reasonably sure that they were being evicted from their previous tenancy.

I find that the tenants entered into the tenancy agreement with the landlord based on a negligent misrepresentation by the tenants about the reason their previous tenancy ended. A negligent misrepresentation is when a party to a contract makes a statement carelessly or without reasonable grounds for believing its truth. One remedy for negligent misrepresentation is to rescind the contract.

Section 62 of the Act allows me to make any order to give effect to the rights, obligations and prohibitions under the Act. As the tenants negligently misrepresented to the landlord the facts with respect to their previous tenancy, I dismiss their application for an order of possession of the rental unit.

Conclusion

The tenants’ application 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*.

Dated: March 29, 2023