



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding THE CANADA LIFE ASSURANCE COMPANY
("CHRONICLE") and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, MNDCT, OPN, FFL

Introduction

The tenants applied to the Residential Tenancy Branch [the 'RTB'] for Dispute Resolution. The tenants ask me for the following orders against the landlords.

1. Cancellation of a Two-month Notice to End Tenancy for occupation by the landlords' child, issued on or about 19 January [the 'Notice'].
2. Compensation in the amount of \$25,704.00 [the 'Compensation Claim'] *per* section 51 (2) of the *Residential Tenancy Act* [the 'Act'].

The landlords also applied for Dispute Resolution. They ask me for the following orders against the tenants.

1. Exclusive possession of the rental unit in favour of the landlords pursuant to a mutual agreement to end tenancy [the 'Agreement'].
2. Reimbursement for the \$100.00 filing fee for this application.

The landlords appeared at the hearing on 5 September 2023. The tenants also appeared, along with an advocate.

Issues to be Decided

During the hearing, the landlords conceded that they had withdrawn the Notice. This leaves me with three issues to determine.

Regarding the Compensation Claim, did the landlords accomplish the stated purpose for ending this tenancy under the Notice? That is, did their child occupy the unit? Or were there extenuating circumstances that prevented this?

Is the Agreement binding upon the parties? Or were the tenants induced to make this Agreement because of a misrepresentation by the landlords?

Should the landlords reimburse the tenants for the cost of filing this application?

Background and Evidence

In January, two days before issuing the Notice, the landlords wrote to the tenants proposing an end to the tenancy. The landlords concluded their proposal with an alternative, writing, 'OR I could simply service [sic] notice to vacate and I move it [sic] back myself.'

From this, I understand the landlords to have meant that the tenants could agree with their proposal to move out, and if they did not, then the landlords would issue the Notice so that the landlords themselves would move into the unit.

The tenants rejected this proposal on 18 January. And so the next day, 19 January, the landlords served the tenants with the Notice.

The tenants disputed the Notice, suspecting that it had been issued in bad faith. The RTB scheduled a hearing of that dispute for April.

In the meantime, however, the parties negotiated their dispute. The tenants told me that the landlords represented to them that their son would move into the unit, and that this induced them to agree to vacate.

The landlords told me that their son did indeed plan to move into the unit, and still hopes to do so. They said that their son had been living with them and paying them rent. But now he has moved elsewhere, and is paying more rent there than he would have to pay if he had moved into the rental unit that is the subject of this dispute.

In an e-mail exchange of 15 March, the tenants wrote to the landlords: 'Please let me know when your son confirms that the July 1 move out date is ok and then I will send you a document signed by [the tenants] stating that [they're] moving out on July 1 and then will cancel the April hearing.'

The landlords replied, 'I would talk to my son and should not be a problem. however, at the meantime, please give me a proper notice with [the tenants'] signature indicating that [they are] moving out on July 1, 2023. Thanks.'

Around this time, the tenants provided the landlords with a signed letter, reading, '[We, tenants' names] tenant[s] of [rental-unit address] (the "Premises") will move out of the Premises by July 1, 2023.' This letter constitutes the Agreement on which the landlords seek to rely.

After having made their Agreement, the tenants withdrew their dispute over the Notice on 29 March.

Later, however, the tenants came to believe that the landlords' son would not, in fact, move into the unit if they vacated.

When the tenants informed the landlords that they would not, therefore, adhere to the Agreement, the landlords wrote an e-mail in June that read (in part):

'we have the moving company all booked. if [the tenants] cost [sic] any delay on to my other possible tenant. I would need to file a small claims court case as well.' [emphasis mine]

The landlords followed up the same day with another e-mail, which read (in part):

'just spoke to the RTB and the other tenant. the other tenant is meant to move in on July 2, 2023 if [the tenants] wouldn't be able to move out as per your phone conversation, the new tenant will be filing a case again [sic] me for compensation via RTB. The new tenant will then be renting an air-bnb or hotel, plus moving truck re-arranging etc...' [emphases mine]

The tenants never abided by their Agreement, and continue to live in the unit.

Analysis

I have considered all the statements made by the parties and the documents to which they referred me during this hearing. And I have considered all the arguments made by the parties.

Regarding the Compensation Claim, did the landlords accomplish the stated purpose for ending this tenancy under the Notice? That is, did their child occupy the unit? Or were there extenuating circumstances that prevented this?

Both parties accept that the landlords did not accomplish the stated purpose for having issued this Notice, *i.e.* so that the son of the landlords could move in. It is clear from their statements to me that this was impossible because the tenants refused to comply with the Notice.

Below, when addressing the Compensation Claim, I say more about the landlords' intention to have their son move in, but I am satisfied that the tenants' refusal to vacate the unit was an extenuating circumstance under section 51 (3) of the Act that prevented the landlords from accomplishing the *stated* purpose for ending the tenancy.

Accordingly, I excuse the landlords from paying the tenants any penalty under section 51 (2).

I dismiss the Compensation Claim without leave to re-apply.

Is the Agreement binding upon the parties? Or were the tenants induced to make this Agreement because of a misrepresentation by the landlords?

The landlords argue that the Agreement binds the parties such that the tenants must vacate, as *per* the Agreement.

The tenants argue that the landlords induced them to enter into the Agreement by insisting that their son would move into the unit. But the tenants argue that this was a misrepresentation: the landlords never intended the son to move into the unit. And because this inducement was based on a misrepresentation, the tenants are not bound by the Agreement.

The tenants make two central points in support of their argument that the landlords misrepresented that they intended their son move into the unit:

1. in the weeks leading up to the intended move-out, the landlords referred to an 'other tenant' and 'new tenant' (not their 'son'), and that this indicates that the landlords did not intend their son move in, but that they had, in fact, arranged for other paying tenants to move in; and
2. the landlords also referred to the potential that this 'other tenant' or 'new tenant' would claim damages against the landlords if the 'new tenant' could not move in as planned, and this would be incredible if the 'new tenant' were, in fact, the landlords' son, *i.e.* what son would sue his parent in such circumstances?

For their part, the landlords insist that, though they wrote about an 'other tenant' and 'new tenant', they meant their 'son'. They also argue that the Agreement makes no mention of who might move in after the tenants vacated, and so such a prospect is not part of the Agreement. In other words, it doesn't matter whether the landlords' son actually intended to move in, because that wasn't part of the Agreement for the tenants to move out.

I accept that who was to move in next is not strictly part of the Agreement. But I also accept that the tenants entered into the Agreement with the understanding that it would be the son who would be moving in. The Notice suggested this. And this is what the landlords told the tenants would happen. And this is what the landlords told me would happen.

Not so long ago, the Supreme Court of British Columbia reiterated the test for a fraudulent misrepresentation [*vide Ma v. Nutriview Systems Inc*, 2014 BCSC 725]. This test is:

1. the wrongdoer must make a representation of fact to the victim;
2. the representation must be false in fact;
3. the party making the representation must have either known it was false or made it recklessly without knowing whether it was true or false; and
4. the victim must have been induced by the representation to enter into the contract.

In this case, the landlords represented to the tenants the fact that their son would move into the rental unit. I accept, however, that this was a false representation. I accept this because of the landlords' e-mails referencing – not their son – but a 'new tenant' or an 'other tenant'.

Also, I consider that the landlords originally issued the Notice the day after the tenants refused their original proposal to end the tenancy back in January – a proposal that concluded with the provision that, if the tenants refused to move out, the landlords would issue a notice to end tenancy such that they *themselves* could move into the unit. Again, there is no reference to their son.

Another detail raises doubts in my mind: the landlords said that, before the Notice, their son was living with them; but now, as a result of the tenants refusing to comply with the Notice, the son has had to move somewhere else, at increased cost. At best this is confused: there is no explanation as to why the son would need to leave their parents' home as a result of the tenants' not leaving the rental unit. At worst, it is another indication of the landlords' misleading the tenants to achieve their aims – claiming first that their son was living with them in anticipation of moving into the rental unit; then claiming (when the tenants didn't vacate the rental unit) that the son is now living somewhere costly for which the tenants will be held liable if they don't vacate.

I find that the landlords intended to have the tenants move out, come what may, and sought to realise this intention by whichever means was most expeditious to them. I do not accept that the landlords ever intended their son to move in. Rather, I find that they intended to deceive the tenants into believing their son would move in. Their written communications before issuing the Notice (in January) and after (in June) revealed this deception. And so their representation to the tenants that their son would move in was false, and knowingly false.

I also accept that this representation induced the tenants to enter into the Agreement. The landlords have offered no evidence to contradict this. A representation is not, strictly, a term of a contract (such as this Agreement is). But it can form the basis of a party entering into a contract, which is what happened in this case. And when that basis proves to be false, and was offered up knowing it to be false, then the deceived party may be absolved from fulfilling the contract.

The tenants are not bound by the Agreement and therefore the landlords are not entitled to an Order of Possession stemming from that Agreement. I dismiss the landlords' application in its entirety, without leave to re-apply.

Conclusion

In sum, I dismiss both applications. If there is any doubt as to the fate of the Notice, I dispel that doubt by cancelling the Notice.

I make this decision on authority delegated to me by the Director of the RTB *per* section 9.1(1) of the Act.

Dated: 14 September 2023

Residential Tenancy Branch