

## DECISION

Dispute Codes      DRI, OPT, O

### Introduction

This hearing dealt with the Tenants Application for Dispute Resolution, seeking to dispute an additional rent increase, for an order of possession and monetary compensation for the cost of moving.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

### Issues(s) to be Decided

Are the Tenants entitled to the relief sought?

### Background and Evidence

This hearing involved two different rental units. The former one the male Tenant moved out of, and the present subject unit where he was moved to. For ease of reference I will refer to the first unit as the "previous unit", and the second unit as the "subject unit".

In February of 2009, the male Tenant had received a two month Notice to End Tenancy for the Landlord's use of the unit where the Tenant was living (the previous unit). The Landlord was planning to perform renovations on the previous unit, as well as other apartments in the same residential property. After some adjustments made by the Landlord to the Notices, the Tenant was given until May 31, 2009, to vacate the previous unit.

All residents of the residential property were also given an opportunity to move into a different building, where the subject unit is located, which the Landlord had just completed renovations on. This building is just across a parking lot from the previous building. The rents at this building were higher than the previous building.

Two or three days before he was to vacate the previous unit, the Tenant learned that a trailer he intended on renting had already been occupied by another renter. This left the Tenant without a place to move to on May 31, 2009.

On about May 30 and 31, 2009, the Tenant had help from some friends to move most of his property into a storage unit. On the morning of June 1, 2009, the Tenants spoke with the foreman of the renovation crew working at the building where the previous unit is located and explained the Tenants still had property in the previous unit.

According to the testimony of the female Tenant, the foreman agreed they could have until the end of the day to remove the property. Apparently, the foreman then asked why the Tenants were not simply moving into the other building, where the subject unit is located. A discussion regarding this apparently occurred. The Tenants explained to the foreman that the male Tenant had mental challenges and that he is on disability income. He could not afford the \$895.00 in rent being asked in the subject unit in the new building. He could only afford \$600.00 per month, which he had been paying in the previous unit, due to his limited resources.

The foreman then apparently told the Tenants that the male Tenant could qualify for a rent subsidy and that he could rent the subject unit for \$600.00 per month with the balance being subsidized. The testimony of the Tenants is that they were going to think about this and get back to the foreman. The Tenants then left the previous unit building.

The Tenants were to meet some friends at noon, including a witness who testified at this hearing, back at the previous unit to complete the move out. When the Tenants returned the witness was on the balcony of the previous unit waving at them.

The testimony of the witness was that when she went to the previous unit to help the Tenants complete the move, she found that the locks on the door had been cut out, as if by a "chainsaw" and wood chips were all around the doorway. She was surprised to see that the previous rental unit had been emptied of the Tenants property. The Tenants were very surprised by this.

When the Tenants approached the foreman, he explained that they had been approved to move into the subject rental unit and that he had his crew of workers move the remainder of the Tenants' property into the subject rental unit. According to the witness, the foreman explained to the Tenants that the property manager for the subject unit would be by to have the Tenants sign a new tenancy agreement. The witness testified she heard the female Tenant explain to the foreman that the male Tenant lacked capacity to enter into a contract and that she needed to be there when the new tenancy agreement was to be signed. The witness testified she heard the foreman agree he would pass this information on to the property manager who would bring the new tenancy agreement to the subject unit.

According to the testimony of the witness, she heard the foreman tell the Tenants that the male Tenant would only be responsible to pay \$600.00 per month for the subject unit, and the balance of the rent would be subsidized, or words to that effect.

The Tenants went to the subject rental unit and apparently the female Tenant had errands to run. She testified she told the male Tenant not to sign anything until she got back.

While the female Tenant was away, the property manager arrived at the rental unit and had the male Tenant sign a one year term tenancy agreement, at the rent of \$895.00 per month for the subject unit.

The property manager testified she had not been told by the foreman that the male Tenant lacked capacity to sign the tenancy agreement. She testified that the male Tenant had a discussion with her regarding a free month of rent at the subject unit, which had apparently been offered to renters in the previous building if they moved into the newly renovated, subject building. She explained to the Tenant that he did not qualify for this special consideration. She testified that she did not know, or realize when dealing with him, that the male Tenant lacked capacity to enter into the new tenancy agreement.

In evidence, the Tenants provided a letter from the male Tenant's doctor of some 20 years. In the letter, the doctor explains that while the male Tenant, "... functions at quite a high level, he still suffers from significant psychiatric impairment due to his chronic mental disorder."

The doctor provides his opinion that, "... [the male Tenant] is not competent to understand the consequences of negotiating or signing legal documents such as apartment leases, et cetera."

The Landlord provided copies of the tenancy agreement for the subject unit, and the Notice to End Tenancy for the previous unit and various related documents. The Landlord admitted that they would be willing to let the Tenants out of the lease, however, they could not financially afford to allow the Tenants to remain in the subject unit at \$600.00 rent per month.

### Analysis

Based on the foregoing, the evidence and testimony, and on a balance of probabilities, I find as follows:

I find that the male Tenant did not have the capacity to enter into the tenancy agreement for the subject unit. I order that the tenancy agreement be set aside, as it is void due to the lack of capacity of the male Tenant.

I do not find that the Landlord's agents, the foreman or the property manager, were intentionally or wilfully negligent in order to mislead the Tenants. Nevertheless, I do find that there was a misrepresentation made to the Tenants regarding the ability to have subsidized rent at the subject rental unit. The Tenants relied on this misrepresentation to their eventual detriment, in that no rent subsidies were available and the Landlord is insisting they pay the \$895.00 monthly rent as contained in the tenancy agreement.

There was also miscommunication between the Landlord's agents, as the foreman did not tell the property manager about the lack of capacity of the male Tenant, or the instructions from the female Tenant that she must be there when the tenancy agreement was to be signed.

I also find that the Landlord's agents had no right to move the Tenants' belongings into the rental unit without prior written consent, such as a tenancy agreement being in place. There was also no order of possession allowing the Landlord to enter into the previous unit.

Therefore, I find that the Tenants are entitled to the rent reduction sought and I order that the monthly rent in the subject rental unit will be **\$600.00** per month for the entire term of the tenancy. The Landlord must prepare an account of payments made and adjust any future payments to ensure the Tenants do not pay more than \$600.00 per month for the duration of the tenancy.

On the issue of the duration of the tenancy, I also find that since the tenancy agreement was void and has been set aside the tenancy must not continue. The Tenants are entitled to a period of notice that the tenancy is ending, and I find that two months notice is appropriate in these circumstances, reflecting what is found in portions of the Act.

Therefore, I order that the tenancy shall end at **1:00 p.m. October 31, 2009**. In order to provide certainty to both parties, I am issuing an order of possession for the subject unit on those terms, ordering that the Tenants must vacate the unit entirely by the above time and date. The Landlord must also serve the Tenants with the order of possession in accordance with the Act.

Lastly, I order that the standard form Residential Tenancy Agreement (R.T.B. #1), shall apply to this tenancy for the duration.

As I find the Tenants have been adequately compensated under the Act by the rent reduction, all other claims in this Application are dismissed.

### Conclusion

The male Tenant lacked capacity to enter into a tenancy agreement. The Landlord's agent misrepresented the availability of a subsidy and therefore, the amount of rent payable for the subject rental unit was ordered to be \$600.00 per month. As the tenancy agreement has been set aside, the tenancy must end, and an order of possession has been issued.

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: August 13, 2009.

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Dispute Resolution Officer