



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OLC, OPT

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution to obtain an order of possession and for an order to have the landlord comply with the *Residential Tenancy Act (Act)*, regulation or tenancy agreement.

The hearing was conducted via teleconference and was attended by both tenants and the landlord's agent.

Issues(s) to be Decided

The issues to be decided are whether the tenants are entitled to an order of possession and for an order to have the landlord comply with the *Act*, regulation or tenancy agreement, pursuant to sections 1, 16, and 54 of the *Act*.

Background and Evidence

The tenants currently reside in a basement rental unit in the residential property and have done so since June 2009. Ownership of the residential property changed hands in March, 2010 and on August 2, 2010 the male landlord went to the residential property to collect rent and meet the tenants of the complex.

The parties agree that at that time they entered into a discussion regarding the possibility of the tenants renting the soon to be vacant upstairs rental unit. The parties differ in the understanding of the outcome of that discussion.

The tenants contend through their testimony and documentary evidence that the landlord had agreed to a new tenancy that would include the tenants moving to the new unit on September 1, 2010. The tenant's documentary evidence includes several emails to and from the male landlord dating from August 6 to August 13, 2010.

The male landlord contends that while they did have a discussion that he did not agree to a new tenancy, did not complete a new tenancy agreement or accept any money of any kind as a tenant had not been decided upon. The landlord asserts that he did not have the authority to make the decision without consulting his partner, which he later did and made an offer to rent the unit to a third party.

The male landlord states that the unit was being advertised locally and that tenant would be put on a list of candidates to be considered. The landlord also notes that one of the parties is actually not a current tenant but has been an occupant in her daughter's tenancy and that he feels he should not be having these discussions with the occupant.

Analysis

I find the issue of whether the mother is a tenant or an occupant of the current tenancy is irrelevant to this issue other than to establish the landlord's understanding of subsidiary issues related to ending the current tenancy should the tenants move into the upper floor rental unit.

I accept that a written tenancy agreement was not completed at the time that the tenant met with the landlord. I also accept that the landlord may not have understood that the tenant was looking to have her whole family move into the upper rental unit.

In an email dated August 6, 2010 from the tenant to the landlord the tenant indicates that she is concerned that the building manager showed the upper rental unit to someone on that date and asks the landlord to advise the building manager that both she and her daughter will be moving upstairs and their current unit will be vacant.

The tenant's email goes on to say that she is prepared to provide the building manager with the difference in deposit monies for the new unit. In his response, dated August 6, 2010 the landlord states the building manager "knows you are moving upstairs" and "As for increasing the damage deposit, don't worry about it. We'll just keep it the same. The landlord goes on to advise the tenant on the expectations regarding cleaning the carpets at the end of the current tenancy.

In a separate email dated August 11, 2010 the landlord states that he will be asking a higher rental amount for the unit to offset increased costs of operations and "for that reason, I have to decline my *decision* to give you the upstairs suite. (Emphasis added). The tenant responded via email on August 12, 2010 indicating that she was willing to pay the additional rent.

On August 12, 2010 the landlord responded to the tenant and advised her that he already authorized the building manager to rent the upper rental unit to a third party.

Section 1 of the *Act* states that a tenancy agreement "means 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."

Section 16 states the rights and obligations of both parties under a tenancy agreement start the day the agreement is entered into whether or not the tenant ever occupies the unit.

The three tenets of contracts are capacity, consensus and consideration. In this case, neither party is arguing an issue of capacity, for example no one has indicated that either party was mentally incapacitated at the time of the discussion.

From the email dated August 6, 2010 from the tenant and the landlord's response of the same date I find that consensus had been reached, although it is not explicit in the email what that consensus was, it is clear it had been reached.

I also find that as the landlord indicated in his response email that they would leave the security deposit the same as it currently is rather than increasing the amount due to the increased rent for the upper unit that the landlord accepted monetary consideration, in the form of the security deposit.

Based on the above I find the parties have entered into a tenancy agreement for the upper unit effective September 1, 2010.

Conclusion

I find that the tenants are entitled to an Order of Possession effective **September 1, 2010 after service on the landlord**. This order must be served on the landlord and may be filed in the Supreme Court and enforced as an order of that Court.

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: September 01, 2010.

Dispute Resolution Officer