



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O, OPM

Introduction

This was a hearing with respect to an application by the landlords. The hearing was conducted by conference call. The landlords and the named tenant called in and participated in the hearing.

Issue(s) to be Decided

Are the landlords entitled to a remedy for the tenants' failure to pay rent for May?

Background and Evidence

The rental unit is a house in Surrey. The tenancy began on August 15, 2014 on a month to month basis, with rent in the amount of \$1,500.00 payable on the first of each month.

On March 2, 2015 the landlords served the tenants with a two month Notice to End Tenancy for landlord's use. The Notice was given because the landlords intend to occupy the rental unit. The Notice required the tenants to move out of the rental unit by May 1, 2015, but the notice provision was incorrect because the earliest date that the Notice to End Tenancy could be effective was May 31, 2015.

The tenants objected to the Notice to End Tenancy and they applied to dispute the Notice to End Tenancy. The landlords and the tenants later agreed that the tenants would have until July 1, 2015 to move out. The parties signed a mutual agreement to end the tenancy effective July 1, 2015 and the tenants cancelled their application to dispute the Notice to End Tenancy.

In a letter dated May 17, 2015 the tenants told the landlord that they were moving on June 1, 2015 and would return the keys on that date. At the hearing the tenant said that

he asked for an extension of the move out date so that his child would be able to finish the school year before the tenants had to move. The tenant said that he immediately started looking for another house to rent and as soon as he found one he notified the landlords. The tenant said that an officer at the Residential Tenancy Branch told him that he was entitled to a free month's rent as compensation for the expense of having to top move so he stopped payment of the May rent cheque.

The landlords testified that they gave the Notice to End Tenancy because they intend to move into the rental property. The landlord acknowledged that the original Notice was defective because it gave an incorrect date for the tenants to move out. The landlords' submitted that the tenants disputed the Notice to End Tenancy and then agreed with the landlords by mutual agreement to end tenancy that the tenancy would end on July 1, 2015. The landlords' position is that the mutual agreement fixed the date for the end of the tenancy and superseded the two month Notice to End Tenancy, therefore the tenants were not entitled to withhold payment of rent for May and are not entitled to receive the equivalent of one month's free rent.

Analysis

The landlords' application did not explicitly request payment of a monetary award for May rent, however I consider the intent of the application was expressed by the landlords' statement that they dispute the tenants' claim to be entitled to a month's free rent.

The landlord gave the tenants a two month Notice and by giving the Notice they were obliged to pay compensation equivalent to one month's rent as provided by section 51 of the *Residential Tenancy Act*. The tenants applied to dispute the Notice to End Tenancy because they were not in a position to move out by the date specified in the Notice. They agreed to a later date and recorded it in the form of a mutual agreement to end tenancy. There was no mention or written acknowledgement by the tenants that they were giving up any claim to compensation in exchange for an extension of the date to move from the rental unit. The tenants did move out on what should have been the effective date of the Notice to End Tenancy.

I find that the tenants did not waive their entitlement to compensation required under section 51 of the Act, simply because they sought to negotiate a later end to the tenancy. The landlords gave the tenants an Notice with an incorrect date for the end of tenancy and this was a factor that caused the tenants to dispute the Notice and seek an extension. I find that the tenants were entitled to withhold rent for May and I therefore

dismiss the landlords' claim to challenge the tenants' entitlement to section 51 compensation.

Conclusion

The landlords' 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: July 10, 2015

Residential Tenancy Branch

