



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPB, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords for an order of possession, a monetary order and an order to retain the security deposit and to recover the filing fee.

The Landlords and Tenant DP appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

I note that at the beginning of the hearing, the Landlords explained they were no longer requesting a monetary order for money owed for loss under the Act or tenancy agreement.

Preliminary Matter:

Tenant SP was not at the hearing, but I accept the testimony that he was properly served Notices of the Hearing under sec. 89 of the Act and I was able to proceed with the hearing.

Issue(s) to be Decided

Have the Tenants breached the Act or tenancy agreement, entitling the Landlords to an Order of Possession?

Background and Evidence

There was no signed tenancy agreement, but I heard undisputed testimony that this tenancy began on May 15, 2010, on a month to month basis. The monthly rent is \$775.00 and payable on or before the 1st day of the month. A security deposit in the amount of \$387.50 was paid prior to move in.

I heard undisputed testimony and reviewed the evidence that Tenant DP and the Landlords signed and executed a Mutual Agreement to end the tenancy by the Tenants vacating the rental unit on or before September 30, 2010, at 3:00 p.m. I note that Tenant SP did not sign the Agreement, but I accept the testimony of the Landlords that he was in and out too much to be able to find him.

After query, Tenant DP acknowledged that he was in the USA quite often, and I find that the Agreement was properly executed by Tenant DP as I was not able to determine if Tenant SP resides in the rental unit.

The Tenants did not move out on or before the agreed date and are now over holding in the rental unit. The Landlords have received rental payments for October and November 2010, but have issued receipts for "Use and Occupancy Only." Therefore the tenancy was not reinstated by the Landlords' actions.

Settled Agreement

After testimony by all parties, the Landlords and Tenant DP reached a settled agreement. The Landlords agreed to allow the Tenants to stay in the rental unit until November 10, 2010, at 1:00 p.m., with an additional agreement that they would either cash or endorse and forward the November rent to the Tenants' new landlord. If the Tenants have not made arrangements to move and provide the Landlords with the new landlord's name and information by November 10, 2010 at 1:00 p.m., I allow them to retain the amount for the November rent for money owed under the Act.

The Tenants understand that the Landlords will be issued an order of possession, based upon the settled agreement, and that if the Tenants fail to vacate the rental unit by November 10, 2010, at 1:00 p.m., the Landlords may obtain a writ of possession and have the Tenants evicted.

Tenant DP accepts and affirms that there is probably some carpet damage and that the Landlords may keep the security deposit at the end of the tenancy, which however, does not preclude the Landlords from seeking compensation for further damage over and above the amount of the security deposit through another Dispute Resolution.

Conclusion

The Landlords and Tenants have reached a settled agreement that the tenancy will end on November 10, 2010, at 1:00 p.m.

Based upon the settled agreement, as provided in section 63 of the Act, I grant the Landlords an **Order of Possession** that is effective on **November 10, 2010, at 1:00 p.m.** This order may be filed in the Supreme Court and enforced as an order of that Court.

The Landlords are allowed to keep the security deposit.

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: November 03, 2010.

Dispute Resolution Officer