



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, MNR, MNDC, FF

Introduction

This hearing was convened by way of conference call in repose to the landlords application for an Order of Possession because the tenants have breached an agreement with the landlord; for a Monetary Order for unpaid rent; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (Act), regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

One of the tenants and landlords agent attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Have the tenants breached an agreement with the landlords?
- If so is the landlord entitled to an Order of Possession due to this breach?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

Both parties agree that this tenancy originally started for a fixed term of three months on October 01, 2011. A new tenancy agreement was entered into on January 01, 2012 for another three month fixed term. The tenants agreed to move out of the rental unit at the end of this fixed term of March 31, 2012. The landlord has provided a copy of the tenancy agreement showing the tenants initials on this clause of the agreement. Rent for this unit is \$825.00 per month and was due on the first day of each month.

The landlords agent testifies that the tenants were sent a letter by the landlord informing the tenants that the landlord will not be renewing their lease agreement and informing the tenants that they must consider this letter to be formal notice that the lease will not be renewed and the tenants must vacate the rental unit by noon on March 31, 2012. The landlord's agent testifies that the tenants failed to move out as instructed on March 31, 2012 and the tenants have breached the tenancy agreement. The landlord seeks an Order of Possession to take effect as soon as possible.

The landlord's agent testifies that as the tenants have failed to vacate the rental unit on March 31, 2012 the landlord was not able to re-rent the unit for April 01, 2012 and has lost rental income for April and May, 2012 to the sum of \$1,650.00. The landlord's agent also testifies that the tenants have not paid any rent for either April or May, 2012.

The landlord seeks a Monetary Order to recover the loss of rent and seeks to recover the \$50.00 filing fee paid for this proceeding from the tenants.

The tenant attending testifies that she went to the Residential Tenancy Branch and was told that the tenancy agreement would revert to a month to month agreement at the end of the fixed term. The tenant agrees she did initial the box which informed them that the tenancy would end on March 31, 2012 but did not realize that this would happen as they have not done anything wrong. The tenant also agrees that they have not paid rent for April and May, 2012.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer the parties to s. 55 (2)(c) of the *Act* which states: A landlord may request an order of possession of a rental unit in by making an application for dispute resolution if the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit at the end of the fixed term.

The landlord has provided sufficient evidence to show that this was a fixed term tenancy which provides that the tenants will vacate the rental unit at the end of the fixed term. I find the tenants were aware that the tenancy would end on March 31, 2012 as the tenant did initial the clause in the tenancy agreement which informs them of this. The landlord also followed this up with a letter to the tenants' dated February 27, 2012 which informs the tenants that the lease would not be renewed. I find the tenants would have therefore been aware that the tenancy should have ended on March 31, 2012 and they failed to abide by this term of their tenancy agreement. Consequently, it is my decision that the landlord is entitled to an Order of Possession pursuant to s. 55 (2)(c) of the *Act*.

I further find the landlord is entitled to recover two months' rent from the tenants as they failed to vacate the rental unit at the end of the fixed term and continued to reside in the rental unit without paying rent for April and May, 2012. The landlord is therefore entitled to a Monetary Order to recover the sum of **\$1,650.00** pursuant to s. 67 of the *Act*.

As the landlord has been successful with their claim I find the landlord is entitled to recover the **\$50.00** filing fee from the tenants pursuant to section 72(1) of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for \$1,700.00 comprised of loss of

rent and the filing fee. The order must be served on the respondents and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days after service** on the tenants. This order must be served on the Respondents 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: May 14, 2012.

Residential Tenancy Branch