



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, MNDC, FF, O

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for compensation - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed facts. The tenancy began on October 15, 2008. Rent in the amount of \$1,450.00 is payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$700.00. The Tenants, by text message to the Landlord, gave one month notice to end the tenancy for February 28, 2012 however this notice was rescinded prior to the end of February 2012. The Tenants have not moved out of the unit to date but have paid all rents due, including June 2012 rent.

The Landlord withdraws his claim for \$1,450.00 for the rent of the unit.

The Landlord states that a written tenancy agreement was entered into between the Parties to sublet the Landlord's fully furnished unit and that this agreement provides for an end of tenancy by either Party on the provision of one month's notice. The Landlord states that the tenancy agreement has since gone missing. The Tenants state that the agreement to sublet the unit was oral only and very loose and that nothing was placed into writing. The Tenants state that the matter of the Landlord ending the tenancy was never discussed.

The Landlord states that on March 6, 2012 the Landlord agreed, by text message to the Tenants, that the Tenants could stay longer but only to May 31, 2012. The Landlord accepted rent for June 2012 but sent another text message to the Tenants stating that the monies were accepted not as rent but for occupation until the matter of the end of the tenancy was resolved. The Landlord states that he and his family were to move into the unit on June 1, 2012 but as a result of the Tenants not moving out of the unit on May 31, 2012 the Landlord has incurred expenses of \$60.00 per day to stay at another location and claims compensation of \$2,000.00. No invoice or bill was provided for this claim. The Landlord also claims an Order of Possession.

The Tenants state that the Landlord did not provide them with any notice to end the tenancy and that the Landlord's text does not constitute proper notice. The Tenants dispute the Landlord's claim for compensation as the Tenants state that they were not obligated to move out of the unit and therefore not responsible for any compensation to the Landlord.

Analysis

Section 49 of the Act provides that a landlord who is an individual may end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the unit. A landlord may end a tenancy for this purpose by giving a notice to end the tenancy effective on a date that must be:

- (a) not earlier than 2 months after the date the tenant receives the notice,
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
- (c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

Further, a notice under this section must comply with section 52 that provides as follows:

In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

Regardless of whether a written agreement exists or not, as the Landlord has not provided a notice that conforms to the Act as set out above, I find that the text message is not a valid notice to end the tenancy and that the Landlord is therefore not entitled to an Order of Possession. As the Landlord is not entitled to occupy the unit on May 31, 2012, I find that the Landlord has not substantiated that the Tenants owe the Landlord for any compensation related to the Landlord's stay at another location or residence. I therefore dismiss the Landlord's application and the tenancy continues.

Conclusion

The Landlord's application is dismissed and the tenancy continues.

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: June 20, 2012.

Residential Tenancy Branch