



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlords application for an Order of Possession; for an Order permitting the landlord to keep all or part of the tenants security deposit; 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.

Service of the hearing documents, by the landlords to the tenants was done in accordance with section 89 of the *Act*, sent via registered mail on December 21, 2012. Mail receipt numbers were provided in the landlords' documentary evidence. The tenants were deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlords appeared, gave sworn testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenants, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

At the outset of the hearing the landlords withdrew their applications for a Monetary Order for money owed or compensation for damage or loss and to keep the security deposit.

Issue(s) to be Decided

- Are the landlords entitled to an Order of Possession for landlords' use of the rental unit?

Background and Evidence

The landlord MH testifies that this tenancy started on January 15, 2012 for a fixed term tenancy which expired on January 15, 2013 but had the option of extending on a month to month basis. Rent for this main floor unit is \$1,250.00 per month plus 60 percent of the utilities. The tenants paid a security deposit of \$625.00 on January 01, 2012.

The landlord MH testifies that the landlords live in the basement suite of this property. The landlord served the tenants with a Two Month Notice to End Tenancy for landlords' use of the property on November 28, 2012 in person. This Notice has been provided in evidence and informs the tenants that the rental unit will be occupied by the landlord or the landlords' spouse of a close family member (mother, father or child) of the landlord or the landlords' spouse. The Notice has an effective date of January 31, 2013.

The landlord MH testifies that the tenants had said they would not move out of the rental unit on January 31, 2013 unless the landlord took care of the bedbug issue. The landlord testifies that the bedbugs have been treated correctly. The landlord MH testifies that he and his family wish to occupy the main floor of their property and they require the tenants to move out on the effective date of the Two Month Notice. The landlords seek an Order of Possession effective on January 31, 2013.

The landlords also seek to recover the filing fee of \$50.00.

Analysis

I find the landlords served the tenants with a Two Month Notice to End Tenancy pursuant to s. 49 of the *Act*. This Notice states that the tenants have 15 days to dispute the Notice or the tenancy will end on the date set out on the Notice. In this instance the landlord served the Notice on November 28, 2012 in person. Therefore, this notice is deemed to have been served on the same day. The Notice also states that the tenants are expected to vacate the rental unit on January 31, 2013.

I find the tenants did not dispute the notice within 15 days and have not appeared at the hearing to offer any evidence. Based on the foregoing, I find that the tenants are conclusively presumed, under section 49(9)(a) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice and grant the landlord an order of possession.

With regard to the landlords claim to recover the \$50.00 filing fee paid for this application. The landlord has provided no evidence to show that the tenants refused to move out on January 31, 2012 in fact the landlord testifies that the tenants are in the process of moving out. Therefore, I find the landlords are not entitled to recover the filing fee as the tenants may have moved out on the effective date of the Notice therefore not warranting the landlords to file this application.

Conclusion

I HEREBY ISSUE an Order of Possession in favour of the landlords effective on January 31, 2013. This order must be served on the tenants 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: January 23, 2013

Residential Tenancy Branch

