



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNDC, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession, for compensation for loss or damage under the Act, regulations or tenancy agreement and to recover the filing fee for this proceeding.

The Landlord's agent said he served the Tenants with the Application and Notice of Hearing (the "hearing package") by personal delivery December 8, 2014. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with both the Landlord and the Tenant in attendance.

Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Is there a loss or damage to the Landlord and if so how much?
3. Is the Landlord entitled to compensation for the loss or damage and if so how much?

Background and Evidence

This tenancy started in May, 2012. There was a written tenancy agreement but the Tenant could not remember if it was for a fixed term or month to month. The Landlord's agent said he did not have a copy of the tenancy agreement so he was not aware of the agreement's content. The Tenant said rent is \$1,000.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$500.00 at the start of the tenancy.

The Landlord said he issued a 2 Month Notice to End Tenancy for the Landlord's Use of the Property dated September 15, 2014 as the Landlord was selling the property. As well the Landlord's agent said he included in his evidence package a letter from the purchaser of the property requesting vacant possession so that the purchaser could

move in. The Landlord's agent said he personally delivery the 2 Month Notice to End Tenancy on September 17, 2014.

The Landlord continued to say the Tenants have not moved out on the effective vacancy date which was November 30, 2014 so the Landlord is requesting an Order of Possession for as soon as possible and for a monetary order for unpaid rent for December, 2014 and January, 2015 in the amount of \$1,000.00 for each month totalling \$2,000.00. The Landlord's agent said that the Landlord has returned the Tenant's security deposit of \$500.00 and gave the Tenants compensation of the November, 2014 rent free as per the requirement of the 2 Month Notice to End Tenancy for the Landlord's Use of the Property.

The Tenant said he understood the 2 Month Notice to End Tenancy for the Landlord's Use of the Property he is not disputing the Landlord's claims. The Tenant continued to say that he did not make an application to dispute the Notice to End Tenancy and the reason that they have not moved is because his mother has serious health issues.

The Landlord said that the Act says the Landlord can request an Order of Possession if a tenant does not dispute a Notice to End Tenancy. The Landlord requested an Order of Possession effective for as soon as possible. As well the Landlord said the Tenant owes rent for December and January in the amount of \$2,000.00.

The Tenant said in closing that he apologizes for this problem and he did not want to cause the Landlord any issues, but his mother is ill and they could not move earlier. The Tenant said he is making arrangements to move now.

The Landlord's agent said in closing that the Tenants have been co-operative when he talked with them but they have not moved out which is causing issues for the purchase of the property.

Analysis

Section 49(8) of the Act states that **within 15 days of receiving** a Notice to End Tenancy for Landlord's Use of the Property, a Tenant may apply for dispute resolution. If the Tenant fails to do this, then under section 49(9) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End Tenancy on the day it was served in person or on September 17, 2014. Consequently, the Tenant would have had to apply to dispute the Notice by October 2, 2014.

I find that the Tenant has not applied for dispute resolution. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession.

Further Section 57 of the Act says a Landlord may apply for compensation from a tenant that stays after the tenancy ends which is an overholding tenant. I find the Landlord's agent has established grounds for compensation from December 1, 2014 to January 15, 2015 (estimated date of vacant possession) in the amount of (\$1,000.00/30 days = \$33.33/day for 46 days = \$1,533.33). I award the Landlord \$1,533.33 in compensation for the Tenants overholding from December 1, 2014 to January 15, 2015.

I also find that as the Landlord was successful in this matter she is entitled to recover the filing fee of \$50.00 for this proceeding from the Tenant. I order the Landlord to recover \$50.00 from the Tenants as full payment of the filing fee for this proceeding.

I award the Landlord a monetary Order for \$1,583.33.

Conclusion

I find, pursuant to section 55 of the Act, that the landlord is entitled to an Order of Possession effective **two days after service** on the tenants and the Order may be filed in the Supreme Court and enforced as an Order of that Court.

I find that the landlord is entitled to monetary compensation pursuant to section 67 in the amount of **\$1,583.33** rent owed and I grant an Order in that amount. This Order must be served on the tenants and may be filed in the Provincial Court (Small Claims) 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 07, 2015

Residential Tenancy Branch

