



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, MNR, MNSD, MNDC, FF

Introduction

This hearing was scheduled to deal with a landlord's application for an Order of Possession for landlord's use of property and a Monetary Order for unpaid and/or loss of rent and authorization to retain the security deposit. The tenants did not appear at the hearing. The landlords affirmed that they personally served each tenant with a copy of the hearing documents at the rental unit on January 18, 2015. Based upon the landlords' affirmed testimony I found the tenants sufficiently served with notice of this proceeding and I continued to hear from the landlords without the tenants present.

The landlords testified that the tenants vacated the rental unit at the end of January 2015 and the landlords have regained possession of the rental unit. Accordingly, I find an Order of Possession is no longer required and I do not provide one with this decision. As such, the remainder of this decision pertains to the landlords' monetary claim against the tenants.

Issue(s) to be Decided

1. Are the landlords entitled to compensation for unpaid and/or loss of rent?
2. Are the landlords entitled to retain the tenants' security deposit?

Background and Evidence

The landlords testified that the month to month tenancy commenced July 10, 2014 and the tenants paid a \$475.00 security deposit. The tenants were required to pay rent of \$950.00 on the 1st day of every month. On October 31, 2014 the landlords issued a 2 Month Notice to End Tenancy for Landlord's Use of Property to the tenants with a stated effective date of December 31, 2014 (referred to as the Notice or 2 Month Notice)

The landlords testified that after receiving the 2 Month Notice the male tenant advised the landlords that he would the rental unit would be vacated at the end of November 2014 and the tenants did not pay rent for November 2014 as compensation for receiving a 2 Month Notice. However, the tenants did not vacate the rental unit and continued to occupy the rental unit until the end of January 2015 without paying any rent since October 2014

The landlords seek compensation of \$2,850.00 which is the equivalent of three months of rent for November 2014; December 2014 and January 2015.

I noted that the 2 Month Notice did not indicate a reason for ending the tenancy on the second page of the Notice. The landlords testified that the reason for ending the tenancy was so that the landlord's parents could move into the rental unit and the tenants were informed of this reason.

Analysis

Based upon the undisputed submissions before me, I accept that the terms of tenancy as submitted by the landlords; that the tenants were served with a 2 Month Notice dated October 31, 2014; that the tenants vacated the rental unit at the end of January 2015; and, the tenants had not paid any rent for the months of November 2014 through January 2015.

Although the 2 Month Notice served upon the tenants did not indicate the reason for ending the tenancy in the space provided on the approved form, based upon the landlord's undisputed testimony that the reason was given to the tenants verbally; the reason given complies with one of the reasons for ending a tenancy under section 49 of the Act; and, the tenants acted upon the 2 Month Notice by vacating the rental unit; I have amended the 2 Month Notice to reflect the reason for ending the tenancy was as provided under section 49(3) of the Act:

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit

It is important to note that the landlords are obligated to fulfil the reason indicated on the 2 Month Notice, as amended, and failure to do so may result in the application of the consequences provided under section 51(2) of the Act.

With respect to the landlord's monetary claims against the tenants, I provide the following findings and reasons.

Section 26 of the Act requires that a tenant pay rent when due under the terms of tenancy. This obligation continues until such time the tenancy ends in one of the ways permitted under the Act. Section 57 of the Act provides that where a tenant continues to occupy the rental unit after the tenancy has ended, the landlord may claim compensation from the tenant for over-holding. Since the tenants were served with a 2 Month Notice section 51(1) of the Act entitled the tenants to compensation equivalent to one month's rent that may be accomplished by withholding the last month's rent.

Since the tenants occupied the rental unit for three months for which they did not pay rent, after taking into account compensation the tenants were entitled to under section 51(1), I find the landlords entitled to compensation equivalent to two month's of rent or \$1,900.00. I further award the landlords recovery of the filing fee paid for this application.

I authorize the landlords to retain the tenants' security deposit in partial satisfaction of the amounts awarded to the landlords.

In light of the above, I provide the landlords with a Monetary Order calculated as follows:

Rent: November 2014 – January 2015	\$ 2,850.00
Less: tenants' compensation under section 51	(950.00)
Less: security deposit	(475.00)
Plus: filing fee	50.00
Monetary Order for landlords	\$ 1,475.00

To enforce the Monetary Order it must be served upon the tenants and it may be filed in Provincial Court (Small Claims) to enforce as an order of the court.

Conclusion

The landlords have been authorized to retain the security deposit and have been provided a Monetary Order for the balance of \$1,475.00 to serve and enforce.

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: February 05, 2015

Residential Tenancy Branch

