



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession, for a monetary order of unpaid rent, to keep all or part of the security deposit and an order to recover the cost of filing the application from the tenant.

The landlord attended the hearing. As the tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on January 20, 2015. The landlord stated the Canada post history indicated the packages were received by the tenants on January 22, 2015. Canada post tracking numbers were provided as evidence of service

I find that the tenants have been duly served in accordance with the Act.

The landlord appeared gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Issues to be Decided

Is the landlord entitled to an order of possession?
Is the landlord entitled to a monetary order for unpaid rent?
Is the landlord entitled to keep all or part of the security deposit?

Background and Evidence

Based on the testimony of the landlord, I find that the tenants were served with a 1 Month Notice to End Tenancy for Cause, issued on January 7, 2015, with an effective vacancy date of February 7, 2015. The notice explains the tenants had ten days to dispute the notice. The notice further explains if the notice is not disputed within the ten

days that the tenants are presumed to accept the notice and must move out of the rental unit by the date specified in the notice.

The landlord testified that they received a text message from the tenants in late January or early February 2015, that they would not be vacating the premises without an order of possession. The landlord stated that recently they were informed by a third party that the tenants have vacated the rental unit and an order of possession is no longer required.

The landlord testified that due to the tenants threats that they would not be leaving the rental unit without an order of possession and then the tenants left earlier than the effective date in the notice they suffered a loss of rent. The landlord seeks to recover unpaid rent for February 2015, in the amount of \$1,100.00.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The tenants did not apply to dispute the Notice and are therefore conclusively presumed under section 47(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice. However, the date in the notice is earlier than the Act allows, and automatically corrects to February 28, 2015.

Although the landlord is entitled to an order of possession effective on the corrected effective vacancy date, the tenants have vacated the premises and an order of possession is no longer required.

In this case, the tenants left the rental unit prior to the effective date written in the notice and prior to the corrected vacancy date, I find February 28, 2014, was the earliest date the tenancy could have legally ended.

Further, the tenants prior to the hearing sent a text message to the landlord that they were not leaving the rental unit without an order of possession, however, the tenants then left the rental unit without proving any further notice and without paying rent. I find the tenants' actions deprived the landlord with the opportunity to mitigate the loss of rent for February 2015. Therefore, I find the tenants breached the Act, and this caused losses to the landlord.

I find that the landlord has established a total monetary claim of **\$1,150.00** comprised for unpaid rent and the \$50.00 fee paid by the landlord for this application.

I order that the landlord retain the security deposit of \$550.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$600.00.**

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

Although the landlord is entitled to an order of possession, the tenants have vacated the premises and an order of possession is not required.

The landlord is granted monetary order, and may keep the security deposit in partial satisfaction of the claim. I grant a monetary order for the balance due.

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 10, 2015

Residential Tenancy Branch

