



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, MNDC, MNSD, FF

Introduction

This hearing was convened in response to applications by the landlords and the tenants, filed under the Residential Tenancy Act (the “Act”).

The landlords’ application is seeking orders as follows:

1. For an order of possession;
2. For a monetary order for damages to the rental unit
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

The tenants’ application is seeking an order as follows:

1. For “other” relief to extend notice given to end tenancy.

Both parties appeared, gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Preliminary matter

At the outset of the hearing it was determined that the landlords’ application for a monetary order for damages is premature. Since the tenants are still residing in the rental unit. The landlord is at liberty to reapply for damages.

Issues to be Decided

Are the landlords entitled to an order of possession?
Are the landlords entitled to keep all or part of the security deposit?
Should the tenants be granted an extension of time to end the tenancy?

Background and Evidence

The parties entered into a fixed term tenancy, which began on September 5, 2014 and was to expire on February 28, 2015. The tenancy agreement indicates that the tenancy ends and the tenant must move out of the rental unit. Rent in the amount of \$900.00 was payable on the first of each month. A security deposit of \$387.50 was paid by the tenants.

The parties agreed a move-in condition inspection report was completed. On February 28, 2015, the parties conducted a move-out inspection; however the tenants failed to vacate the premise.

The landlord testified that the tenants have failed to vacate the premises as required by the fixed term agreement. The landlords seeks an order of possession.

The tenants testified that they did not know that they had to vacate the premises until the landlord sent them a letter on January 5, 2015, and that is not enough time to find alternative housing.

Analysis

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

How a tenancy ends is defined in Part 4 of the Act.

How a tenancy ends

44 (1) A tenancy ends only if one or more of the following applies:

...

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

On September 5, 2014, the parties entered into a fixed term tenancy agreement. The agreement indicates that the tenants must vacate the rental unit on February 28, 2015.

On January 5, 2015, the landlords confirmed with the tenants, by letter, that the tenancy agreement will not be renewed and that they must be moved out of rental unit on February 28, 2015, as indicted in their tenancy agreement.

Based on the above, I find there is no authority under the Act that would allow me to grant the tenants' application to extend their tenancy. The evidence supports the tenants were aware that they were required to vacate the premises on February 28, 2015. Therefore, I dismiss the tenants' application for an extension.

In this case, the tenants have not complied with their tenancy agreement, as they have failed to vacate the premises on the date specified in their agreement. I find the tenants have breached the Act and the tenancy agreement.

Therefore, I find that the landlords are 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.

As the landlords were successful with their application the landlords are entitled to recover the filing fee from tenants. Therefore, I authorize the landlords to retain the amount of \$50.00 from the tenants' security deposit to satisfy this award.

Conclusion

The tenants' application is dismissed.

The landlords' application for a monetary order is dismissed with leave to reapply.

The landlords are granted an order of possession and are authorized to retain the amount of \$50.00 from the tenants' security deposit to satisfy this award.

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: March 27, 2015

Residential Tenancy Branch

