



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LEXINGTON ENTERPRISES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC, O, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application 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; other issues concerning an Order of Possession; and to recover the filing fee from the tenants for the cost of this application.

The landlord withdrew their monetary claim at the hearing.

Service of the hearing documents, by the landlord to the tenants, was done in accordance with section 89 of the *Act*; served by registered mail on May 05, 2015 to both tenants. Canada Post tracking numbers were provided by the landlord in 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 landlord appeared, gave sworn testimony, was 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.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession?
- Is the landlord entitled to keep all or part of the security deposit?

Background and Evidence

The landlord testified that this tenancy started on February 01, 2015 for a fixed term of three months. The tenancy agreement states that the tenancy will end on April 30, 2015 and the tenants must vacate the rental unit by 1.00 p.m. on that date. Rent for this unit was \$825.00 per month due on the 1st of each month. The tenants paid a security deposit of \$412.50 on February 01, 2015.

The landlord testified that the tenants failed to vacate the rental unit on April 30, 2015. The landlord spoke to the tenants and was told as they had not found other accommodation they were not going to vacate the rental unit. The tenants paid rent for May, 2015 over three separate payments and the landlord accepted these amounts and has documented on the receipt that the amounts paid are for use and occupancy only and do not reinstate the tenancy. In June, 2015 the tenants paid two separate amounts to a total of \$550.00. These were also accepted for use and occupancy only and the receipt provided in evidence shows that the tenants were notified that by accepting this money the landlord was not reinstate the tenancy. The landlord has provided copies of the receipts in documentary evidence with the exception of the last receipt as payment was only made by the tenants yesterday.

The landlord testified that as the tenants have breached the tenancy agreement by not vacating the rental unit, the landlord seeks an Order of Possession effective two days after service upon the tenants. The landlord withdrew their claim to recover the remainder of rent for June, 2015 because if the tenants vacate in accordance to an Order of Possession they will not owe any further rent for overholding at the rental unit.

The landlord seeks to recover the filing fee of \$50.00 from the tenants to be deducted from the security deposit.

Analysis

The tenants did not appear at the hearing to dispute the landlord's claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenants, I have carefully considered the landlord's documentary evidence and sworn testimony before me.

I refer the parties to s. 44(1)(b) of the *Act* which states:

(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;

I am satisfied from the evidence presented that the tenancy agreement ended on April 30, 2015 and provides that the tenants will vacate the rental unit by 1.00 p.m. on that date. The tenants have failed to vacate the rental unit and any rent collected by the landlord was done so for use and occupancy only and did not reinstate the tenancy.

It is my decision that the tenancy ended on April 30, 2015 and the tenants have overheld at the rental unit. Consequently, the landlord is entitled to an Order of Possession effective two days after service upon the tenants.

I find that the landlord is entitled to be reimbursed for the **\$50.00** cost of filing this application. I order that the landlord retain this amount from the security deposit of \$412.50 leaving a balance \$362.50 which must be returned to the tenants or otherwise dealt with in compliance with section 38 of the *Act*.

Conclusion

I HEREBY ISSUE an Order of Possession in favour of the landlord effective two days after service upon the tenants. This Order must be served on the Respondents. If the Respondents fail to comply with the Order, the Order 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: June 16, 2015

Residential Tenancy Branch

