



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlords' application: MNDC, MNSD, OPL
Tenants' application: CNL, FF, MNSD, MT, OLC, O

Introduction

This was a hearing with respect to applications by the landlords and by the tenants. The hearing was conducted by conference call. The landlords called in and participated in the hearing. The tenants did not attend, although they were served with the landlords' application and Notice of Hearing and although this was the hearing of their own application to cancel a Notice to End Tenancy for landlord's use

Issue(s) to be Decided

Should the Notice to End Tenancy dated August 31, 2015 be cancelled?

Are the landlords entitled to an order for possession pursuant to the Notice to End Tenancy?

Are the landlords entitled to a monetary award for unpaid rent and if so, in what amount?

Background and Evidence

The rental unit is a strata title apartment in Abbotsford. The tenancy began September 15, 2014 on a month to month basis. The monthly rent is \$875.00 and the tenants paid a security deposit of \$437.50 at the start of the tenancy.

On August 31, 2015 the landlord personally served the tenants with a two month Notice to End Tenancy for landlord's use together with a letter explaining the reason for the Notice to End Tenancy. The letter informed the tenants that one of the landlord's

children would be moving into the rental unit as of November 1, 2015. The Notice to End Tenancy required the tenants to move out by October 31, 2015.

The landlord testified that his daughter intends to move into the rental unit as soon as it is vacant. The tenants' rent was paid by the Ministry of Social Development directly to the landlord. The tenant, A.S. asked the landlord to contact the ministry and have the rent payments directed to the tenant. The landlord was contacted by a Ministry official to advise him of the tenant's request to have the payments redirected. In late October the landlord spoke to the tenants to confirm that they would be moved out by October 31st. The landlord testified that the tenants told him that they were having trouble finding new accommodation and asked for more time to move. The landlord told the tenants that they could remain until the end of November and they did not have to pay rent for November because they were entitled to a month's free rent pursuant to the two month Notice to End Tenancy.

The tenants did not move at the end of November and they continue to occupy the rental unit. The tenants have not paid rent for November, December or for January. The tenants have said they have been able to find new accommodation and have told the landlord that they will not move until they are evicted.

The tenants filed an application to cancel the Notice to End Tenancy and to claim other relief. Their application was not filed until November 27, 2015; if the tenants intended to dispute the Notice to End Tenancy, their application should have been filed within 15 days of the date they were served with the Notice to End Tenancy.

Analysis

The tenants failed to attend the hearing of their application. Their application to dispute the Notice to End Tenancy was filed late. In the absence of an appearance by the tenants, their application is dismissed without leave to reapply.

I accept the landlord's testimony that the tenants requested and were granted an additional month to move. The tenants paid no rent for November and thereby received compensation equivalent to one month's rent that is mandated by section 51(1) of the *Residential Tenancy Act*.

The tenants' application to cancel the Notice to End Tenancy has been dismissed without leave to reapply. The tenants continue to occupy the rental unit and have refused to move. They have not paid rent for December or January. The effective date of the Notice to End Tenancy was extended to November 30, 2015, but the tenants

continue to occupy the rental unit. I find that the landlords are entitled to an order for possession effective two days after service on the tenants. This order may be registered in the Supreme Court and enforced as an order of that court.

The tenants received free rent for November; they have occupied the rental unit for December and January without paying rent. I find that the landlord is entitled to occupation rent for December and January in the amount of \$1,750.00. The landlords are entitled to recover the \$50.00 filing fee for their application, for a total award of \$1,800.00. I order that the landlords retain the security deposit of \$437.50 in partial satisfaction of this award and I grant the landlords an order under section 67 for the balance of \$1,362.50. This order may be registered in the Small Claims Court and enforced as an order of that court.

Conclusion

The tenants' application has been dismissed. The landlords have been granted an immediate order of possession and a monetary order in the amount of \$1,362.50.

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 21, 2016

Residential Tenancy Branch

