



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, OPL, MNR, MNSD, FF, O
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Introduction

This hearing was convened by way of conference call concerning applications made by the landlords and by the tenants. The landlords have applied for an order of possession for landlord's use of property; for an order of possession for breach of an agreement; for an order of possession for unpaid rent or utilities; for a monetary order for unpaid rent or utilities; for an order permitting the landlords to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application. The tenants have applied for an order cancelling a notice to end the tenancy for unpaid rent or utilities; for an order that the landlords comply with the *Act*, regulation or tenancy agreement; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlords.

One of the landlords and one of the tenants attended the hearing and each represented the other named parties. The parties provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to each other. The parties were given the opportunity to question each other respecting the testimony and evidence provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

At the commencement of the hearing, the tenant advised that the tenants have vacated the rental unit and the tenants' application for an order cancelling a notice to end the tenancy is withdrawn.

During the course of the hearing the tenant consented to the landlords changing the locks to the rental unit. Therefore, I hereby grant an Order of Possession in favour of the landlords effective immediately.

Issue(s) to be Decided

The issues remaining to be decided are:

- Have the landlords established a monetary claim as against the tenants for unpaid rent?
- Should the landlords be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?
- Have the tenants established that the landlords should be ordered to comply with the *Act*, regulation or tenancy agreement?
- Have the tenants established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for damages suffered due to a breach of an agreement?

Background and Evidence

The landlord testified that this fixed term tenancy began on July 27, 2013 and expired after 1 year. The tenancy agreement contains an error, in that it states that the fixed term expires on July 31, 2013, which should state July 31, 2014. A copy of the tenancy agreement has been provided and it also states that at the end of the fixed term, the tenant must move out of the residential unit and initials appear for a landlord and for a tenant.

Rent in the amount of \$1,525.00 per month is currently payable on the 1st day of each month. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$750.00 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is a single family dwelling. The landlord is not aware that the tenants have vacated the rental unit, and no keys have been returned.

The landlord further testified that on January 28, 2016 the landlord posted to the door of the rental unit a 2 Month Notice to End Tenancy for Landlord's Use of Property, a copy of which has been provided. The notice is dated January 28, 2016 and contains an effective date of vacancy of March 31, 2016. The reasons for issuing the notice are:

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse;

- The landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant.

The landlord testified that she is the daughter of the other named landlord, and her grandmother and brother will be moving into the rental unit, and then it will be demolished.

The landlord further testified that the tenant failed to pay rent for February, 2016 and on February 4, 2016 the landlord posted to the door of the rental unit a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. A copy has been provided and it is dated February 4, 2016 and contains an effective date of vacancy of February 17, 2016 for unpaid rent in the amount of \$1,525.00 that was due on February 1, 2016. No rent has been paid since the issuance of the notice.

The landlords received no notice that the tenants were vacating the rental unit of their own accord or in accordance with either notice to end the tenancy, and were prepared to not receive rent for March due to the compensation required after giving the tenants a 2 Month Notice to End Tenancy for Landlord's Use of Property. The landlords did not know the tenants have vacated the rental property, the keys have not been returned to the landlords, and the landlords have not received the tenant's forwarding address.

The landlords claim unpaid rent for the month of February, 2016 in the amount of \$1,525.00, recovery of the \$50.00 filing fee, and an order permitting the landlords to keep the \$750.00 security deposit in partial satisfaction of the claim.

The tenant testified that upon moving into the rental unit, the parties had a long discussion wherein they agreed that the tenancy would last 5 years. The tenants went into great detail about it explaining to the landlords that they intended to purchase a house but needed 5 years. They also explained to the landlords that the tenants had a 3 year lease with an alarm company, and elderly parents, and required a long-term tenancy. The landlords assured the tenants that it was not a problem and ending the tenancy early would not happen.

When the parties signed the tenancy agreement, the tenant asked about the fixed term and the landlord responded that it was a precautionary term only. The tenants felt comfortable with that and were assured a continued tenancy.

The tenant further testified that the tenants moved out of the rental unit on February 27, 2016 but have not returned the keys.

The tenants claim \$3,200.00 for breach of a verbal agreement between the parties, stress, cost of moving and the alarm company fees.

Analysis

It is clear that the parties had a written agreement that at the end of the fixed-term of the tenancy, July 31, 2014, the tenants had to vacate the rental unit. However, the tenants didn't vacate and therefore, I find that the tenancy after that date reverted to a month-to-month tenancy.

The *Residential Tenancy Act* permits a landlord to give a 2 Month Notice to End Tenancy for Landlord's Use of Property if the tenancy is a periodic tenancy. The tenants' position is that the parties had an oral agreement to live in the rental unit for 5 years. I have no reason to doubt that testimony, however if it were a material term of the tenancy, the tenants ought to have ensured that it was reflected in the tenancy agreement. Unless it's in writing and there is a specific date that the tenancy is to end, the landlord has the right to issue the notice. Therefore, having found that the landlord has not failed to comply with the *Act* or the tenancy agreement, the tenants' application is dismissed.

The tenants do not deny that no rent was paid for February, 2016 and did not deny that no notice was given to the landlords that the tenants were leaving, nor did they return the keys. Where a landlord gives a 2 Month Notice to End Tenancy for Landlord's Use of Property the landlord is also obligated to provide compensation to the tenants in an amount equivalent to one month's rent. A tenant may choose to move out earlier by giving the landlord 10 days written notice and paying rent to the effective date, and the landlord is still obligated to provide the compensation to the tenants. In this case, the tenants didn't give any notice, didn't pay any rent for February, and I find that the landlords are entitled to rent in the amount of \$1,525.00.

Since the landlords have been successful with the application, the landlords are also entitled to recovery of the \$50.00 filing fee.

I order the landlords to keep the \$750.00 security deposit in partial satisfaction of the claim and I grant a monetary order in favour of the landlords as against the tenants for the difference in the amount of \$825.00.

Conclusion

For the reasons set out above, the tenants' application is hereby dismissed in its entirety without leave to reapply.

I hereby grant an immediate Order of Possession in favour of the landlords.

I further order the landlords to keep the \$750.00 security deposit and I grant a monetary order in favour of the landlords as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$825.00.

These orders are final and binding and may be enforced.

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 11, 2016

Residential Tenancy Branch