



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes mndc, opc, ff

Introduction

The landlord applies for an Order of Possession, and a Monetary Order for unpaid rent.

At the hearing, the landlord requested that I also consider monetary claims for unpaid utilities and for damage to the premises caused by the tenants. The tenants did not consent to me hearing this new portion of the claim. This issue is governed by Rule 2.11, of the Rules of Procedure. In the absence of a formal and properly filed amendment to the claim with advance notice of 14 days to the tenants, I declined to consider these additional elements. Should the parties be unable to resolve these further issues between themselves, the landlord remains at liberty to file a new claim to have these matters heard.

Issues to Be Decided

- Is the Notice to End Tenancy served upon the tenants effective to end this tenancy, and entitle the landlord to an Order of Possession?
- Is there use and occupancy rent money due and payable by the tenants?

Background and Evidence

This tenancy began May 19, 2014. Rent was due on the 1st day of each month in the amount of \$1,100.00. A security deposit of \$550.00 was paid. The landlord served the tenants with a One Month Notice to End Tenancy on October 29, 2014, on the basis that the tenants were repeatedly late paying rent. The tenants did not file a dispute of the notice. They offered rent for December, which was accepted by the landlord on a use and occupation basis by the landlord. The tenants paid no further rent, and vacated the premises February 25, 2015.

Analysis

As the landlord has recovered possession of the premises, no Order of Possession is now required, and that portion of the claim is dismissed.

The tenancy was to end effective November 30, 2014 pursuant to the Notice. That end date was extended to December 31, 2014, on the basis of the payment by the tenants for use and occupation. The tenants remained in the premises beyond December 31, 2014 however, and as such became overholding tenants (as defined in section 57 of the Residential Tenancy Act). Section 57(3) permits a landlord to claim compensation from an overholding tenant for any period that the tenant occupies the rental unit after the tenancy ends. This entitles the landlord compensation for overholding rent for all of January (of \$1,100.00) and for 25 days in February (\$982.14). I therefore order that the tenants pay to the landlord the total overholding rent to February of \$2,082.14. As the landlord is successful in this claim, I also order payment by the tenants of the landlord's \$50.00 filing fee.

Conclusion

The claim for an Order of Possession is dismissed. The tenants must pay the sum of \$2,132.14 to the landlord.

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 03, 2015

Residential Tenancy Branch

