



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL-S, MNDCL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not participate in the conference call hearing, which lasted approximately 15 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that on September 20, 2018 he forwarded the landlord's application package via registered mail to the tenant. The landlord provided a Canada Post receipt and tracking number as proof of service. The landlord testified that he personally served a subsequent evidence package to the tenant on September 28, 2018. Based on the testimony of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the application package on September 25, 2018, the fifth day after its registered mailing. I further find that the tenant has been served with the subsequent evidence package on September 28, 2018, the day it was personally served.

Preliminary Issue – Amendment of Landlord's Application

The landlord confirmed that he wished to amend the landlord's application to increase his monetary claim to include November rent of \$900.00. I find that the tenant should

reasonably have known that the landlord would suffer this loss of income if he did not vacate the rental unit to permit the landlord to re-rent the unit. Based on this undisputed evidence and in accordance with section 64(3)(c) of the *Act*, I amend the landlord's application to include a monetary claim for November rent of \$900.00.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord authorized to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested?

Is the landlord authorized to recover the filing fee for this application from the tenant?

Background and Evidence

As per the submitted tenancy agreement and testimony of the landlord, the tenancy began on May 1, 2018 on a month-to-month basis. Rent in the amount of \$900.00 is payable on the first of each month. The tenant remitted a security deposit in the amount of \$450.00 at the start of the tenancy, which the landlord still retains in trust. The tenant continues to reside in the rental unit.

A 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice") was issued to the tenant on August 7, 2018 by way of posting to the rental unit door where the tenant resides. The notice indicates an effective move-out-date of August 16, 2018. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 10 Day Notice on August 10, 2018, three days after its posting.

The landlord seeks a monetary order of \$2,700.00 for unpaid rent from August 2018 to October 2018. The landlord claimed that the tenant has not paid any rent for the above three months. The landlord also seeks a monetary order for the loss of November rent in the amount of \$900.00.

The landlord seeks \$55.00 in damages to cover the anticipated costs of carpet cleaning. The landlord acknowledged that the work has not been conducted to date.

The landlord is also seeking to recover the \$100.00 filing fee for this application from the tenant.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for unpaid rent or utilities the tenant may, within five days, pay the overdue rent or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant does not pay the overdue rent or file an application, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice and must move out of the rental unit.

Based on the landlord's testimony and the notice before me, I find that the tenant was served with an effective notice. As the tenant did not pay the overdue rent or file an application to dispute the notice, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, and must move out of the unit. As this has not occurred, I find that the landlord is entitled to a two (2) day order of possession, pursuant to section 55 of the *Act*.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which is the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

I find that the landlord proved that the current rent for this unit is \$900.00. I find the landlord provided undisputed evidence that the tenant failed to pay full rent from August 2018 to October 2018. I also find that the tenant should reasonably have known that the landlord would suffer the loss of November rent in the amount of \$900.00 if he did vacate the unit. Therefore, I find that the landlord is entitled to \$3,600.00 in rent.

I find the landlord's claim to damages premature as the tenant had not vacated the rental unit at the time the application was made. The landlord has not presented evidence in the form of invoices or work orders. For these reasons, I dismiss the landlord's application for compensation in the amount of \$55.00 with leave to reapply.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for the application for a total award of \$3,700.00.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit in the total amount of \$450.00 in partial satisfaction of the monetary award and I grant an order for the balance due \$3,250.00.

Conclusion

I grant an order of possession to the landlord effective **two (2) days after service on the tenant**.

I issue a monetary order in the landlord's favour in the amount of \$3,250.00.

The landlords' claim for compensation for damage is dismissed with leave to reapply.

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: October 30, 2018

Residential Tenancy Branch