



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPM, MNRL, FFL

Introduction

On October 29, 2018, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession based on a Mutual Agreement to End Tenancy pursuant to Section 55 of the *Residential Tenancy Act* (the “*Act*”), seeking a Monetary Order for compensation for unpaid rent pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Landlord attended the hearing; however, the Tenants did not attend the hearing. The Landlord provided a solemn affirmation.

The Landlord confirmed that he served each Tenant the Notice of Hearing package and evidence by hand at 2:00 PM on October 30, 2018. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenants were served the Notice of Hearing packages and evidence.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession based on the Mutual Agreement to End Tenancy?
- Is the Landlord entitled to compensation for unpaid rent?

- Is the Landlord entitled to recover the filing fee?

Background and Evidence

The Landlord stated that the tenancy started on January 1, 2016 and that rent was currently \$1,380.00 per month, due on the first of each month. He advised that the tenancy agreement required a security deposit of \$690.00; however, the Tenants never paid this.

He stated that a Mutual Agreement to End Tenancy was signed with the Tenants on September 6, 2018 with an effective end date of the tenancy for October 31, 2018 at 11:45 AM. This agreement was entered into evidence. As the Tenants had not moved out by the effective date of the agreement, the Landlord applied for an Order of Possession. However, he advised that after making his Application, he made six visits to the rental unit and the Tenants had finally given up vacant possession on December 2, 2018.

In addition, he advised that the Tenants only returned one set of keys and they did not return the key fob either.

Finally, the Landlord stated that the Tenants had not paid rent for September, October, and November 2018 and as a result, he was seeking compensation in the amount of **\$4,140.00.**

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

I note that Section 55 of the *Act* allows a Landlord to submit an Application for Dispute Resolution seeking an Order of Possession based on a Mutual Agreement to End Tenancy, and I must consider if the Landlord is entitled to that Order if the agreement is valid.

As well, Section 44 of the *Act* allows a tenancy to end by mutual consent of both the Landlord and the Tenants.

Section 26 of the *Act* states that rent must be paid by the Tenants when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenants have a right to deduct all or a portion of the rent.

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

In considering this matter, I have reviewed the Mutual Agreement to End Tenancy and both the Landlord and Tenant signed and agreed to the terms stated in that agreement. Based on the undisputed evidence before me, I am satisfied that the Landlord and Tenants agreed to mutually end the tenancy on October 31, 2018 at 11:45 AM. As the Tenants failed to vacate the rental unit by this time, I find that the Landlord is entitled to an Order of Possession. However, as the Tenants have given up vacant possession of the rental unit prior to this hearing, it is not necessary to award an Order of Possession.

With respect to the unpaid rent, as outlined above, the undisputed evidence is that the rent for September, October, and November 2018 was not paid in full. As such, I also find that the Landlord is entitled to compensation for unpaid rent. Consequently, I grant the Landlord a monetary award in the amount outlined below.

As the Landlord was successful in this Application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenants to the Landlord

Item	Amount
September rent arrears	\$1,380.00
October rent arrears	\$1,380.00
November rent arrears	\$1,380.00
Recovery of Filing Fee	\$100.00
Total Monetary Award	\$4,240.00

Conclusion

I provide the Landlord with a Monetary Order in the amount of **\$4,240.00** in the above terms, and the Tenants must be served with **this Order** as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: December 6, 2018

Residential Tenancy Branch