



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, OPM, OPR, FFL

Introduction

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

- 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;
- an Order of Possession for non-payment of rent and arise from a mutual agreement to end the tenancy pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:40 am in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 am. One of the landlords attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlords and I were the only ones who had called into this teleconference.

The landlords testified that the tenant was personally served the notice of dispute resolution package on December 17, 2018. I find that the tenant was deemed served with this package on this date, in accordance with section 89 of the Act.

Issue(s) to be Decided

Are the landlords entitled to:

- 1) a monetary order for unpaid rent;
- 2) retain all or a portion of the tenant's security deposit;
- 3) an order of possession; and

- 4) recover the filing fee for this application from the tenant?

Background and Evidence

The landlords testified that the parties entered into a written tenancy agreement on March 23, 2018. The tenancy was on a month-to-month basis. Monthly rent was \$1,000. The tenant paid a security deposit in the amount of \$500 at the start of the tenancy, which the landlords still retain. In the tenancy agreement, the parties agreed to a late payment of rent fee of \$5/day, to a maximum of \$25/month.

The landlords testified that the tenant was personally served with the 10 Day Notice to End Tenancy (the “**Notice**”) on November 2, 2018. The Notice set out that as of November 1, 2018, the tenant failed to rent in the amount of \$1,490, representing a portion of October 2018 rent (\$490), and the entirety of November 2018 rent (\$1,000).

The landlords testified in late November 2018, the tenant paid \$400 towards these arrears.

On November 16, 2018, the parties entered into a written agreement (the “**November Agreement**”) whereby the parties agreed:

- 1) if the tenant moved out of the rental unit by November 30, 2018, the landlord would forgive the rental arrears (\$1,490); or
- 2) if the tenant paid the rental arrears in full by December 15, 2018, and paid the December 2018 rent, the landlords would cancel the Notice, and the tenancy could continue; or
- 3) if the tenant neither paid the balance of the rental arrears, nor moved out of the rental unit by December 1, 2018, the tenant would forfeit his entire security deposit.

The November Agreement was signed by both landlords and the tenant.

The landlords testified that the tenant did not move out by November 30, 2018, and did not pay the full amount of the rental arrears or the December 2018 rent by December 15, 2018. The landlords testified that the tenant moved out on January 3, 2019, and new tenants moved in that same date.

The landlords submitted a monetary order worksheet which sets out the amount of the landlords’ claim for \$2,165 as follows:

	Rent owed	Late fee	Total
October 2018	\$90	\$25	\$115
November 2018	\$1,000	\$25	\$1,025
December 2018	\$1,000	\$25	\$1,025
			\$2,165

Analysis

I have reviewed all the documentary evidence provided by the landlords and find that the tenant was served with the Notice in accordance with section 88 of the Act.

As the tenant has already moved out of the rental unit, and new tenants have moved in, there is no need to issue an order of possession. Accordingly, I dismiss the landlord's application for an order of possession, with leave to reapply.

Based on the landlords' undisputed testimony, I find that the tenant failed to pay \$90 of his rent for October 2018, and \$1,000 of his rent for each of November and December 2018. I find that the balance of rent owing is \$2,090.

Following the issuance of the Notice, the parties entered into the November Agreement which creates three paths by which the issue of the unpaid rent could be resolved:

- 1) the tenant could move out by November 30, in which case the landlords would forgive the debt;
- 2) the tenant could pay all outstanding arrears and December rent by December 15, 2018, in which case the tenant would be permitted to stay remain in the rental unit, and the Notice would be cancelled; or
- 3) the tenant could decline to pay the rental arrears, and not move out by November 30, in which case he would forfeit his damage deposit to the landlords

I find that the November Agreement does not have the effect of cancelling the Notice. Rather, it gives the tenant additional time to comply with it (by paying full rental arrears by December 15, 2018), or work towards its cancellation (by moving out by November 30, 2018). As the tenant did neither of these, the Notice remains valid.

Section 67 of the Act allows me to make a monetary order for a tenant's failure to comply with the Act. Section 26 of the Act requires that a tenant pay rent. I find that the tenant failed to do this (as specified above).

Accordingly, I find that the landlords are entitled to a monetary order in the amount of \$2,165 representing the balance of unpaid rent owed by the tenant, and the three months of late fees.

As the landlords have been successful in their application, I order that the tenant pay their filing fees, in the amount of \$100, pursuant to section 72 of the Act.

Conclusion

I dismiss the landlord's application for an order of possession, with leave to reapply.

Pursuant to section 72(2), I order that the landlord may retain the entire security deposit (\$500) in partial satisfaction of the rent due for October, November, and December 2018.

Pursuant to sections 67 and 72, I order that the tenant pay the landlord \$1,765 as follows:

ITEM	AMOUNT
Filing Fee	\$100
Unpaid October 2018 Rent	\$90
Unpaid November 2018 Rent	\$1,000
Unpaid December 2018 Rent	\$1,000
Late Fees x 3 @ 25.00/month	\$75
Less Security Deposit	-\$500
TOTAL	\$1,765

Should the tenant fail to comply with this order, this order may be filed in, and enforced as an order of, the Small Claims Division of the Provincial 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: February 4, 2019

Residential Tenancy Branch