



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDCT, FFT, OPRM-DR, MNRL, FFL

Introduction

This hearing involved cross applications made by the parties. On January 31, 2019, the Tenants applied for a Dispute Resolution proceeding seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On March 4, 2019, the Tenants made an amendment to their Application seeking monetary compensation pursuant to Section 67 of the *Act*.

On February 4, 2019, the Landlord made an Application for Dispute Resolution seeking an Order of Possession for Unpaid Rent pursuant to Section 46 of the *Act*, seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On February 15, 2019, the Landlord made an amendment to their Application increasing the request for monetary compensation pursuant to Section 67 of the *Act*.

The Tenant attended the hearing and D.C. attended the hearing as an agent for the Landlord. All in attendance provided a solemn affirmation.

The Tenant advised that the Notice of Hearing package was served to the Landlord’s office by hand on January 31, 2019 and the Landlord confirmed receipt of this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served with the Notice of Hearing package.

The Tenant also advised that the Amendment and his evidence was served to the Landlord by registered mail on March 4, 2019. The Landlord confirmed receipt of this package on March 11, 2019. Rule 4.6 of the Rules of Procedure requires that the

Amendment and any supporting evidence be received by the Respondent not less than 14 days before the hearing. As this was not complied with, and as the Landlord was not prepared to respond to this, I am satisfied that accepting the Amendment and evidence would be prejudicial. As such, the Tenant's request for compensation was dismissed with leave to re-apply. In addition, I am not satisfied that it would be appropriate to accept and consider the Tenant's evidence when rendering this decision. However, the Tenant was allowed to speak to this evidence during the hearing.

The Landlord advised that he served the Tenants the Notice of Hearing package and evidence by registered mail on February 7, 2019 and the Tenant confirmed that he received these packages. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenants were served with the Notice of Hearing package and evidence.

The Landlord also advised that the Amendment was served to the Tenants by registered mail on February 15, 2019 and the Tenant confirmed receipt of this package. As service of this Amendment complies with Rule 4.6 of the Rules of Procedure, I am satisfied that the Amendment was appropriately served and would be considered when rendering this decision.

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

- Are the Tenants entitled to have the Notice cancelled?
- Are the Tenants entitled to recover the filing fee?
- Is the Landlord entitled to an Order of Possession for unpaid rent?
- Is the Landlord entitled to a Monetary Order for unpaid rent?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord advised that the tenancy started on October 1, 2018 and that rent was established at \$3,500.00 per month, due on the first day of each month. He stated that the Tenant advised him that they vacated the rental unit on February 23, 2018 but he did not receive the keys back until March 2019, when the Tenant mailed them back. He stated that a security deposit of \$1,750.00 was paid. He submitted a copy of the tenancy agreement to substantiate the details of the tenancy.

The Tenant agreed that the tenancy started on October 1, 2018. However, he stated that rent was only \$3,100.00 per month as he did work on the property in lieu of rent. He advised that he received \$400.00 a month back from the property manager for October, November, and December 2018. He also stated that he did not have proof of this agreement in writing.

The Landlord confirmed that the property manager made this agreement to compensate the Tenant for maintenance completed on the property every month. However, he advised that the Tenants' cheque for January 2019 rent was deemed to be insufficient by the bank and was returned. He stated that he served the Notice to the Tenants by taping it to the Tenants' door on January 27, 2019 which indicated that \$3,500.00 was outstanding on January 1, 2019. The Notice also indicated that the effective end date of the Notice was February 8, 2019. In total, the Landlord is seeking compensation in the amount of **\$10,500.00** for January, February, and March 2019 rent arrears.

The Tenant stated that he put a stop payment on the January 2019 rent cheque as the furnace was not functioning and there was no heat in the rental unit since the middle of November 2018. He advised that he informed the Landlord of this issue four or five times, and he referenced a quote from a repair company with respect to the cost of the repairs. However, he did not pay to have the furnace repaired nor did he file for Dispute Resolution seeking that the Landlord complete any emergency repairs. He stated that he gave up vacant possession of the rental unit on February 23, 2019 and then he mailed the keys back to the Landlord in March 2019.

The Landlord confirmed that he received the keys back on March 11, 2019, along with one remote control to the rental unit, and a notice from the Tenants advising that they would be vacating the rental unit as of February 23, 2019.

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 have reviewed the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I am satisfied that the Notice meets all of the requirements of Section 52.

Section 33 of the *Act* outlines the Landlord's and Tenants' duties when an emergency repair is required. I have emphasized the applicable subsections with respect to this situation.

Emergency repairs

33 (1) In this section, "emergency repairs" means repairs that are
(a) urgent,
(b) necessary for the health or safety of anyone or for the
preservation or use of residential property, and...

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;**
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;**
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.**

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

- (a) claims reimbursement for those amounts from the landlord, and**
- (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.**

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

Other than simply stating that the furnace had not been functioning since November 2018, the Tenant has not provided any evidence to substantiate that the “emergency repairs” sought did exist or that this issue constituted a repair that is urgent or necessary for the health or safety of anyone or for the preservation or use of the rental unit. Furthermore, there is no evidence before me that the Tenant followed the steps in subsection (3) to have this issue repaired and that he paid for this repair himself. As such, I do not find that the Tenant was entitled to deduct any amount from rent pursuant to the *Act*, and I dismiss this portion of his Application.

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.

While it is the Tenant’s position that the rent was not \$3,500.00 per month, I find it important to note that the Tenant acknowledged receiving \$400.00 back for October, November, and December 2018 for compensation based on work that the Tenant completed around the property. As such, I find that this confirms that the Tenant had in fact been paying \$3,500.00 per month for rent. It is clear to me that the compensation the Tenant received was for services rendered and was not tied to the actual amount of rent due each month. Furthermore, in conjunction with the written tenancy agreement that confirms inasmuch, I am satisfied that the rent established per month was \$3,500.00.

Should the Tenants not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid rent. Once this Notice is received, the Tenants would have five days to pay the rent in full or to dispute the Notice. If the Tenants do not do either, the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenants must vacate the rental unit.

The undisputed evidence before me is that the Notice was posted on the Tenants’ door on January 27, 2019. As per Section 90 of the *Act*, the Notice would be deemed received three days after it was posted. According to Section 46(4) of the *Act*, the

Tenant has 5 days pay the overdue rent or to dispute this Notice. Section 46(5) of the *Act* states that *“If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.”*

As the fifth day after being deemed to have received the Notice fell on Monday February 4, 2019, the Tenants must have paid the rent in full or made their Application by this day at the latest. As outlined above, the undisputed evidence is that the rent was not paid in full when it was due, nor was it paid within five days of the Tenants being deemed to have received the Notice. Moreover, the Tenants did not establish that they had a valid reason for withholding the rent pursuant to Section 33 of the *Act*.

As the Landlord’s Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenants have not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 52 and 55 of the *Act*. However, as the Tenants had already vacated the rental unit, I find that granting an Order of Possession was unnecessary.

Furthermore, as the Tenants returned the keys to the Landlord in March 2019, I find that this is the date that the Tenants gave up vacant possession of the rental unit and the date of when the tenancy ended. As such, I am satisfied that the Landlord is entitled to a monetary award for unpaid rent, and I grant the Landlord a Monetary Order in the amount of **\$10,500.00**, which is comprised of rent owed for the months of January, February, and March 2019.

As the Tenants were unsuccessful in this application, I find that the Tenants are not entitled to recover the \$100.00 filing fee paid for this Application.

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
January 2019 – Outstanding rent	\$3,500.00
February 2019 – Outstanding rent	\$3,500.00
March 2019 – Outstanding rent	\$3,500.00
Filing fee	\$100.00
Total Monetary Award	\$10,600.00

Conclusion

I dismiss the Tenants' Application with respect to the cancellation of the Notice without leave to reapply and I dismiss the Tenants' Application with respect to the monetary compensation with leave to reapply.

The Landlord is provided with a Monetary Order in the amount of **\$10,600.00** 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: March 15, 2019

Residential Tenancy Branch