



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPM, MNRL-S, FFL

Introduction

On May 7, 2019, 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*, seeking to apply the security deposit towards this debt 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 Tenant did not make an appearance. The Landlord provided a solemn affirmation.

The Landlord confirmed that he served the Tenant the Notice of Hearing package by registered mail on May 11, 2019 (the registered mail tracking number is on the first page of this decision). Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was deemed to have received the Notice of Hearing package five days after it was mailed.

He also confirmed that he served the Tenant his evidence by registered mail on May 31, 2019 (the registered mail tracking number is on the first page of this decision). Based on this undisputed testimony, and in accordance with the time frame requirements of Rule 3.14 of the Rules of Procedure, I am satisfied that the Tenant was deemed to have received the evidence five days after it was mailed. As such, I have accepted this evidence and will consider it 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

- 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 apply the security deposit towards the 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 stated that the most current tenancy started on October 1, 2018 and that the tenancy ended when the Tenant gave up vacant possession of the rental unit in early June 2019. Rent was currently \$1,750.00 per month, due on the first of each month. A security deposit of \$875.00 was paid.

He stated that a Mutual Agreement to End Tenancy was signed with the Tenant on April 12, 2019 with an effective end date of the tenancy for May 6, 2019 at 1:00 PM. This agreement was entered into evidence. He then stated that the Tenant needed more time so a second Mutual Agreement to End Tenancy was signed with the Tenant on April 12, 2019 with an effective end date of the tenancy for May 10, 2019 at 1:00 PM. This second agreement was entered into evidence.

As the Tenant 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, the Tenant had finally given up vacant possession in early June 2019.

He also stated that the Tenant was continuously late paying rent and had not paid rent for April or May 2019, and as a result, he was seeking compensation in the amount of **\$3,500.00**.

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 Tenant.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has 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 Tenant agreed to mutually end the tenancy on May 10, 2019 at 1:00 PM. As the Tenant failed to vacate the rental unit by this time, I find that the Landlord is entitled to an Order of Possession. However, as the Tenant has 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 April and May 2019 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. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain the security deposit in partial satisfaction of the debt outstanding.

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 Tenant to the Landlord

Item	Amount
April rent arrears	\$1,750.00
May rent arrears	\$1,750.00
Less security deposit	- \$875.00
Recovery of Filing Fee	\$100.00
Total Monetary Award	\$2,275.00

Conclusion

I provide the Landlord with a Monetary Order in the amount of **\$2,275.00** in the above terms, and the Tenant must be served with **this Order** as soon as possible. Should the Tenant 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: June 20, 2019

Residential Tenancy Branch