



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL-S, OPR, FFL

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for:

- an order of possession, further to having served a 10 Day Notice to End Tenancy for Unpaid Rent dated July 15, 2019 ("10 Day Notice"),
- a monetary order for unpaid rent of \$3,765.00, and
- recovery of the cost of their \$100.00 Application filing fee.

The Tenants, B.K. and E.R., and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenants and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing. However, the Tenants did not submit any evidence to the RTB for service on the Landlord.

### Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any orders sent to the appropriate Party.

Early in the hearing, the Parties agreed that the tenancy ended on September 13, 2019, and that the Landlord no longer needs an order of possession. Further, as the Landlord

had applied for recovery of the unpaid rent, but had submitted evidence regarding other monetary claims, I advised that the other monetary claims would be severed from this hearing with leave to reapply, as they were not related to the matters for which the Landlord applied. The Landlord's non-rent related monetary claims are dismissed with leave to reapply.

#### Issue(s) to be Decided

- Is the Landlord entitled to an order of possession?
- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

#### Background and Evidence

The Parties agreed that they did not have a written tenancy agreement, but that the periodic tenancy began on October 1, 2018, with a monthly rent of \$900.00, due on the first day of each month. The Parties agreed that the Tenant paid a security deposit of \$450.00, and no pet damage deposit. The Parties agreed that the rental unit was a recreational vehicle ("RV") in an RV Park, and that it was the Tenants' primary residence.

The Landlord said that the Tenants did not pay full rent in June 2019, saying that they were short by \$165.00. He also said they did not pay their rent for the three months prior to June 2019, nor any rent thereafter. The Landlord said he claimed unpaid rent for June 2019 through to and including October 2019. The Landlord said that he did not know how long the Tenants would remain in the rental unit when he applied for dispute resolution in July 2019. I advised that the Landlord could not claim for something that was not owing, so I dismissed his claim for unpaid rent in October 2019 without leave to reapply.

The Tenants said that the Landlord told them that they would have to vacate the rental unit, because he had separated from his wife and needed a place to stay. The Landlord confirmed that this was the case, but that the Parties had agreed that the Tenants would move out on July 1, 2019. The Landlord said: "[B.K.] and I had a conversation. I don't want to go through arbitration. Can you get out by the end of the month? He came up with some money, and I cancelled the [10 Day ] Notice. But they didn't leave on July 1."

The Tenants said that they had to wait for the rent money, because they were without an income. They said:

[The Landlord] was fine with that. He got payment by the end of May that covered for June, as well. He said he wanted to take back the trailer for personal use as he's separated, and to do repairs. We said we deserve proper notice which is four months. He said that the trailer was sold, and we would have to be out by the end of June, as his ex-wife would be sending a crew. We said that we required the proper notice. He said there is no tenancy, and he didn't have to do that. We paid to the end of June. He was still stating it was sold. We texted his ex and said that if it was sold, why not give us proper notice? She didn't know what we were talking about.

The Tenants agreed that they did not pay any rent after June 2019, and that they continued to live in the rental unit. They said they believed they did not have to pay rent, because of the reason the Landlord was asking them to leave.

Month	Amount paid	Total Amount Due
June 2019	\$735.00	\$165
July 2019	\$0.00	\$900.00
August 2019	\$0.00	\$900.00
September 2019	\$0.00	\$900.00
<b>Amount Unpaid</b>		<b>\$2,865.00</b>

The Tenants said that they paid rent in full for June 2019, but they did not pay rent for July through September 2019.

The Tenants said that on September 13, 2019, the Landlord's ex-wife and a "moving crew" arrived and took the Tenants' belongings, except for a couch and a table, and moved it to a storage unit.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent. In the hearing, the Landlord said that he was owed \$2,865.00 in unpaid rent as of September 1, 2019.

I find that the Tenants did not provide sufficient evidence that the Landlord intended to renovate the rental unit, which would have required him to serve them with a Four Month Notice to End Tenancy for Renovations. The Landlord served the Tenants with a 10 Day Notice, because the Tenants did not pay rent, which they have acknowledged. The purpose on the notice to end tenancy is the purpose that must be accomplished.

The Parties did not submit proof of rent payment or lack thereof, and they disagreed on how much the Tenants paid the Landlord in June 2019. As the burden of proof is on the Landlord in this claim, I find that he provided insufficient evidence to establish that there was an amount owing for June 2019. However, based on the Landlord's undisputed evidence regarding rent not paid in July through September 2019, I find the Landlord is entitled to a Monetary Order pursuant to section 67 in the amount of \$2,700.00 for unpaid rent. I also award the Landlord reimbursement of the **\$100.00** filing fee.

Further to the offsetting provisions of section 72, the Landlord is entitled to apply the security deposit of \$450.00 to the monetary award.

A summary of my monetary finding follows:

ITEM	AMOUNT
Award to Landlord for outstanding rent	\$2,700.00
Reimbursement of filing fee	\$100.00
(Less security deposit)	(\$450.00)
<b>Monetary Order</b>	<b>\$2,350.00</b>

I award the Landlord with a monetary order for **\$2,350.00** from the Tenants.

### Conclusion

I find that the Tenants violated the Act by failing to pay rent for three months, while continuing to live in the rental unit. As a result, I grant a Monetary Order to the Landlord in the amount of **\$2,350.00**, made up of three months' rent at \$900.00 per month, plus recovery of the \$100.00 Application filing fee, minus retention of the Tenants' \$450.00 security deposit.

This Order must be served on the Tenants. If the Tenants fail to comply with this Order, the Landlord may file the order in the Provincial Court (Small Claims) and be enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: September 25, 2019

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Residential Tenancy Branch