



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNDCL-S MNRL-S OPR

Introduction

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

- an Order of Possession for Unpaid Rent, pursuant to sections 46 and 55 of the *Act*;
- a Monetary Order for unpaid rent and loss of rental revenue pursuant to section 67 of the *Act*; and
- recovery of the cost of the filing fee for this application from the tenants.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Landlord's agent S.A. attended on behalf of the landlord and is herein referred to as "the landlord".

As both parties were present, service of documents was confirmed. The tenants confirmed receipt of the landlord's Notice of Dispute Resolution Proceeding Package and documentary evidence. The tenants confirmed that they did not submit any documentary evidence for this matter. Based on the undisputed testimonies of the parties, I find that the tenants were served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an order of possession on the basis of the 10 Day Notice to End Tenancy for Unpaid Rent?

Is the landlord entitled to a monetary order for unpaid rent or rental revenue loss?

Is the landlord entitled to recover the cost of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

No written tenancy agreement was submitted into documentary evidence. The tenant testified to the terms of the tenancy as he understood them to be, which were not disputed by the landlord, as follows:

- The tenancy began on May 1, 2019.
- Monthly rent of \$1,000.00 is payable on the third Wednesday of the month to coincide with the tenants' disability payments.
- The tenants paid a security deposit of \$500.00 at the beginning of the tenancy, which the landlord continues to hold.

The tenants testified that on June 23, 2019, the landlord changed the locks on the rental unit, preventing the tenants' access to the rental unit. The tenants contacted the police and the police assisted them in regaining entry to the rental unit. The tenants testified that on July 3, 2019, the landlord sent them a letter telling them, among other things, to vacate the rental unit and that he would lock them out of the rental unit and have them arrested. The landlord's agent confirmed that the landlord had changed the locks and sent the letter.

On July 11, 2019, the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice). The tenants confirmed receipt of the 10 Day Notice on July 11, 2019 posted on the door.

A copy of the 10 Day Notice was submitted into evidence by the landlord. The notice is dated July 11, 2019 and claims that \$1,100.00 in rent was owed as of July 1, 2019.

The tenants testified that they had attempted to contact the landlord at the address for service provided on the 10 Day Notice but were confused as the contact information was for the landlord's agent. The landlord's agent confirmed that they did not provide the tenants with the authorization letter regarding the fact that the landlord's agent was acting for the landlord, until it was sent in the Notice of Dispute Resolution Proceeding package for this hearing.

The tenants confirmed that they did not file an Application for Dispute Resolution to dispute the 10 Day Notice as they were unaware of the requirement to do so. I referred the tenants to the 10 Day Notice on which it is clearly stated the tenants must either pay the rent owed or dispute the notice within five days of receipt of the notice.

The statement of account submitted into evidence by the landlord contained conflicting information and errors. The landlord failed to submit any evidence such as rent receipts to confirm the amount of rent received and when. The landlord's agent explained that the landlord had been hospitalized and as such she had been dealing with other family members who may not be familiar with the tenancy agreement. Therefore, the landlord's agent acknowledged that the monthly rent according to the tenancy agreement was likely \$1,000.00. The tenants provided very clearly and compelling testimony pertaining to the terms of the tenancy agreement and how much had been paid and when. The tenants were very forthright in confirming that there was rent money owed and they were ready to make payment for the rent owed. They testified that they had been holding onto the rent money until this hearing as they were not sure what to do given the landlord's July 3, 2019 letter threatening them with being thrown out of the rental unit. After discussing the amount of rent paid and rent outstanding, the parties agreed that as of the date of the hearing, there was \$4,000.00 in outstanding rent owed by the tenants.

Analysis

A tenant who receives a 10 Day Notice to End Tenancy for Unpaid Rent under section 46 of the *Act* has five days after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

Section 55 of the *Act* provides that I must consider if the landlord is entitled to an order of possession if the tenant fails to dispute the Notice, and is therefore conclusively presumed to have accepted the effective vacancy date of the Notice, and if the landlord has issued a notice to end tenancy that is compliant with section 52 of the *Act*.

In this matter, I find that the tenants failed to dispute the 10 Day Notice within the time limits provided by the *Act*. As such, I have reviewed the landlord's 10 Day Notice to determine if the Notice has complied with the requirements of section 52 of the *Act*. I find that the 10 Day Notice fails to comply with the form and content requirements of section 52 of the *Act* as the grounds for the tenancy to end are incorrectly stated on the Notice, that being that \$1,100.00 in rent was payable on July 1, 2019. According to the testimony provided by the tenants, the terms of this tenancy required payment of rent on

the third Wednesday of the month, to coincide with the tenants' disability payments. Further, the tenants testified that the agreed upon amount of monthly rent payable is \$1,000.00. During the hearing, the landlord's agent confirmed that it was possible that rent was \$1,000.00 instead of \$1,100.00 and agreed to amend the amount of rent sought to reflect \$1,000.00. The landlord's agent presented no evidence to dispute the testimony of the tenants pertaining to the term of the tenancy requiring when payment of rent was due.

As such, I find the landlord is unable to obtain an Order of Possession on the basis of the 10 Day Notice. The 10 Day Notice is cancelled and of no force or effect, and the tenancy will continue until ended in accordance with the *Act*.

The tenants confirmed that there was rent outstanding as they did not know what to do with making payment given the scheduling of this hearing and the landlord's letter threatening to throw them out of the rental unit. Since the landlord had previously locked the tenants out of the rental unit, I find the tenants concerns to be credible. As the parties agreed on the amount of \$4,000.00 in rent owed and the tenants confirmed that they had set aside their rent pending this hearing, I find that the landlord is entitled to the outstanding rent owed by the tenants.

Therefore, I order the tenants to make payment to the landlord of \$4,000.00 for the rent owed. To enforce this order, I issue a monetary order to the landlord in the amount of \$3,500.00 and I order the landlord to retain the \$500.00 security deposit.

I decline to grant the landlord the recovery of the filing fee for this application as the landlord was unsuccessful in obtaining an Order of Possession from this application and failed to present well-documented or accurate information pertaining to rent owed, and therefore relied solely on the forthright testimony provided by the tenants regarding rent owed in order to obtain resolve his claims for unpaid rent.

Conclusion

The 10 Day Notice is cancelled and of no force and effect as it failed to meet the form and content requirements required by section 52 of the *Act*. The landlord's application for an Order of Possession is dismissed.

The tenants are ordered to pay the landlord \$3,500.00 for outstanding rent that they withheld pending the outcome of this hearing and the landlord is ordered to retain the \$500.00 security deposit, in full satisfaction of the \$4,000.00 in outstanding rent. A

Monetary Order is issued to the landlord as enforcement of this order. The landlord is provided with this Order 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: November 4, 2019

Residential Tenancy Branch