



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL MNDL-S MNRL-S OPC OPM OPR**

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

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- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- An order for possession under a 10-Day Notice to End Tenancy for Unpaid Rent ("Ten-Day Notice") pursuant to sections 46 and 55;
- An order for possession under a One Month Notice to End Tenancy for Cause (One Month Notice") pursuant to sections 47 and 55;
- An order of possession under a Mutual Agreement to End Tenancy ("Mutual Agreement") pursuant to section 55;
- Authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

I conducted this hearing by teleconference. The landlord attended with the agents SS and NN ("the landlord").

The tenants did not attend. I kept the teleconference line open from the time the hearing was scheduled for twenty minutes to allow the tenants the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I

confirmed the correct call-in number and participant code for the tenants had been provided.

The landlord testified the landlord personally served the tenants with the Notice of Hearing and Application for Dispute Resolution on September 6, 2019; a Notice of Proof of Service was filed. Further to section 88 of the Act, I find the landlord served the tenants on September 6, 2019.

I explained the hearing process to the landlord and the landlord had an opportunity to ask questions.

Preliminary Issue

At the outset, the landlord requested the following:

- Amendment of the application to include a request for a monetary award for outstanding rent for the month of September 2019 in the amount of \$922.50

The landlord submitted a copy of the One Month Notice to End Tenancy for Cause (“the One Month Notice”) dated June 17, 2019 which was posted on the tenants’ door on June 17, 2019 and included an effective date July 31, 2019.

The landlord also submitted a copy of the Mutual Agreement to End Tenancy (“Mutual Agreement”) between the parties dated July 30, 2019. In the Mutual Agreement, the parties agreed the tenancy would end on August 31, 2019 and the tenants would vacate the unit at 1:00 PM that day.

The landlord provided uncontradicted affirmed testimony that the landlord filed this Application on August 24, 2018 and that rent for the month of September 2019 had subsequently accrued. The landlord testified the tenants remained in the unit.

Rule 4 of the *Rules of Procedure* allows for the amendment of an application at the hearing in circumstances that can reasonably be anticipated; if sought at the hearing, such an amendment need not be submitted or served.

In consideration of the evidence filed and the testimony of the landlord, further to Rule 4, I find the tenants could reasonably have anticipated that the landlord would claim a monetary order for outstanding rent for September 2019. I accordingly allow the landlord to amend the application as sought.

Issue(s) to be Decided

Is the landlord entitled to the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- An order for possession under a 10-Day Notice to End Tenancy for Unpaid Rent ("Ten-Day Notice") pursuant to sections 46 and 55;
- An order for possession under a One Month Notice to End Tenancy for Cause (One Month Notice") pursuant to sections 47 and 55;
- An order of possession under a Mutual Agreement to End Tenancy ("Mutual Agreement") pursuant to section 55;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

Background and Evidence

The landlord provided uncontradicted testimony as the tenants did not attend the hearing.

The tenancy between the parties began on June 1, 2018. Rent is \$952.50 monthly payable on the first of the month. At the beginning of the tenancy, the tenants provided a security deposit of \$450.00 which the landlord holds. The tenants have not provided any written authorization to the landlord to retain the deposit.

The landlord submitted a copy of the tenancy agreement.

The landlord issued the One Month Notice which the landlord testified the landlord served by posting to the tenants' door on June 17, 2019, thereby affecting service under section 90 on June 20, 2019. The effective vacancy date is July 31, 2019.

The Notice states the tenants may file an Application for Dispute Resolution within ten days or the tenants are presumed to accept the Notice and must move out of the unit by the effective date. The landlord submitted a copy of the One Month Notice as evidence. The landlord filed a witnessed Proof of Service form.

The landlord testified the tenants did not file an Application for Dispute resolution within ten days and did not move out.

The landlord testified that the parties signed a Mutual Agreement to End Tenancy ("Mutual Agreement") on July 30, 2019 which is in the standard RTB form; the landlord submitted a copy as evidence. In the Mutual Agreement, the parties agreed the tenancy would end on August 31, 2019 and the tenants would vacate the unit at 1:00 PM that day.

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The landlord provided uncontradicted evidence that the tenant is currently in arrears of rent in the amount of \$1,595.00.

The landlord requested a monetary order for outstanding rent of \$1,595.00, reimbursement of the filing fee of \$100.00 and authorization to apply the deposit of \$450.00 to the monetary award for a total award requested of **\$1,245.00**.

The landlord requested an order of possession effective two days after service.

A summary of the landlord's claim follows:

ITEM	AMOUNT
Outstanding rent	\$1,595.00
Reimbursement of filing fee	\$100.00
(Less deposit)	(\$450.00)
Monetary Order Requested	\$1,245.00

Analysis

I have reviewed all documentary evidence and testimony.

I find the parties entered into a Mutual Agreement to End Tenancy requiring the tenants to vacate the unit at 1:00 PM on August 31, 2019.

Further to section 55(2)(d), I find the landlord and tenants have agreed in writing that the tenancy is ended. I accept the uncontradicted evidence of the landlord and find the tenants have not vacated the unit.

I accordingly find that the landlord is entitled to an order of possession of the rental unit.

Based on the uncontradicted evidence of the landlord, I find the landlord is entitled to a monetary order pursuant to section 67 in the amount of **\$1,245.00** for unpaid rent. I 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 deposit of \$450.00 to the monetary award.

A summary of my monetary finding follows:

ITEM	AMOUNT
Award to landlord for outstanding rent	\$1,595.00
Reimbursement of filing fee	\$100.00
(Less security deposit)	(\$450.00)
Monetary Order	\$1,245.00

Conclusion

I grant a monetary order to the landlord in the amount of **\$1,245.00**.

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.

I also grant the landlord an order of possession effective two days after service on the tenant.

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: October 25, 2019

Residential Tenancy Branch