



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNRL -S MNDCL – S FFL

Introduction

This hearing dealt with the landlords' application for an Order of Possession for unpaid rent and a Monetary Order for unpaid and/or loss of rent and authorization to retain the security deposit. The landlords appeared at the hearing; however, there was no appearance on part of the tenants.

Since the tenants did not appear, I explored service of hearing documents upon them. The landlords submitted that the proceeding package was sent to each tenant via registered mail on January 9, 2020 but that the registered mail packages were not picked up by the tenants. The landlords testified that their evidence package was posted to the door of the rental unit on February 6, 2020. The landlords confirmed that the tenants continue to occupy the rental unit.

Under section 90 of the Act, a person is deemed to be in receipt of documents five days after mailing, even if the person refuses to accept or pick up their mail; and, three days after posting on the door at the address where the tenant resides. Pursuant to section 90 of the Act, I deemed the tenants served with the proceeding package and the evidence package and I continued to hear from the landlords without the tenants present.

I noted that the landlords' evidence did not include a proper tenancy agreement. Rather, the male tenant had completed and signed a rental application. The male tenant named the female tenant on the rental application but she did not sign it. I note that the landlords had included copies of rent cheques that had been provided to them and the cheques name the female respondent as the account holder. As such, I accept that both named respondents are tenants.

Issue(s) to be Decided

1. Are the landlords entitled to an Order of Possession for unpaid rent?
2. Are the landlords entitled to recover unpaid and/or loss of rent; and, if so, how much?
3. Are the landlords authorized to retain the tenants' security deposit?

Background and Evidence

The tenancy started on July 1, 2013 and the landlords collected a security deposit of \$800.00. The tenants are required to pay rent of \$1,600.00 on the first day of every month.

The tenants' rent cheques were dishonoured starting in February 2019 and the landlords have been unable to cash the tenant's post dated cheques due to insufficient funds. The landlords started issuing 10 Day Notices to End Tenancy for Unpaid Rent, but the rent was eventually paid, and the tenancy continued until the month of November 2019. On November 17, 2019 the landlords posted a 10 Day Notice to End Tenancy for Unpaid Rent on the door of the rental unit indicating rent of \$1,600.00 was outstanding as of November 1, 2019; however, the tenants have not paid the outstanding amount or rent for the subsequent months. Rather, the only payments received from the tenants since the 10 Day Notice was posted on November 17, 2019 was \$200.00 in early December 2019, \$100.00 in early January 2020, and \$100.00 in late February 2020. The tenants did not file to dispute the 10 Day Notice dated November 17, 2019.

The landlords seek to end the tenancy despite the tenants promises to catch up on the rental arrears. The landlords testified that the female tenant had given them a "repayment plan" document in late February 2020 that indicated a rent for March 2020 and onwards would be made by a series of payments; however, the landlords are not agreeable to continuing the tenancy given all of issues they have had in collecting rent. I ordered the landlords to provide me with a copy of the document, which they did. I note it is signed by the female tenant and pertains to making rent payments for March 2020 onwards, but it does not address the rental arrears for November 2019 through February 2020.

The landlords seek to regain possession of the rental unit as soon as possible and recover unpaid and/or loss of rent for the months of November 2019 through March 2020, less the \$400.00 they have received.

Analysis

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right to withhold rent. I was not provided any evidence to suggest the tenants had a legal right under the Act to withhold rent.

Where a tenant does not pay rent the landlord is at liberty to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the 10 Day Notice or the tenant has five days to dispute the 10 Day Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the 10 Day Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the 10 Day Notice.

I accept the unopposed evidence before me that the tenants were required to pay rent of \$1,600.00 on the first day of every month and the tenants have failed to do so. I also accept that the landlords posted a 10 Day Notice to End Tenancy for Unpaid Rent on the door of the rental unit on November 17, 2019. As such, it is deemed to be received by the tenants three days later, on November 20, 2019, pursuant to section 90 of the Act. Accordingly, I find the tenants had until November 25, 2019 to either pay the outstanding rent in full or file to dispute the 10 Day Notice. Since the tenants did neither, I find the tenancy ended on November 30, 2019. Therefore, I find the tenants are over-holding and the landlords are entitled to regain possession of the rental unit. I provide the landlords with an Order of Possession effective two (2) days after service upon the tenants.

Based upon the unopposed evidence before me, I find the landlords entitled to recover from the tenants the unpaid rent for November 2019. Considering the tenants did not vacate the rental unit by November 30, 2019 and continued to occupy it to this date, I find their actions, or lack thereof, has caused the landlords to suffer loss of rent for the months of December 2019 through March 2020. Taking into account the \$400.00 the landlords did receive during this period, I award the landlords \$7,600.00 for unpaid and loss of rent [(\$1,600.00 x 5 months - \$400.00)].

I authorize the landlords to retain the tenants' security deposit in partial satisfaction of the rent owed to the landlords. I also award the landlords recovery of the \$100.00 filing fee paid for this application.

In light of all of the above, the landlords are provided a Monetary Order to serve and enforce upon the tenants, calculated as follows:

Unpaid and/or loss of rent (Nov 2019 – March 2020)	\$7,600.00
Filing fee	100.00
Less: security deposit	<u>(800.00)</u>
Monetary Order	\$6,900.00

Conclusion

The landlords are provided an Order of Possession effective two (2) days after service upon the tenants. The landlords are authorized to retain the security deposit and are provided a Monetary Order for the balance owing of \$6,900.00.

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 06, 2020

Residential Tenancy Branch