



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Princess Daphne Apartment
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNRL -S, MNDCL -S, FFL

Introduction

This participatory hearing was scheduled pursuant to an Interim Decision issued by an Adjudicator on March 18, 2020 in response to the landlord's application for an Order of Possession and Monetary Order for unpaid rent under the Direct Request procedure.

Only the landlord's agents appeared at the hearing. Since the tenant did not appear, I explored service of the hearing documents upon the tenant.

The manager testified that she sent the hearing package to the tenant via registered mail on March 23, 2020. The manager provided the registered mail tracking number as proof of service (recorded on the cover page of this decision). A search of the tracking number showed that the registered mail was successfully delivered on March 24, 2020. Accordingly, I was satisfied the tenant was duly notified of this proceeding and I continue to hear from the landlord without the tenant present.

The landlord's agent testified that the tenant continues to occupy the rental unit and the tenant has not paid any monies for rent or use and occupancy for the month of April 2020 and the landlord requested the monetary claim be amended to include loss of rent for April 2020. Pursuant to the Rules of Procedure, an Application for Dispute Resolution may be amended during the hearing where the request is reasonably foreseeable such as circumstances where a tenant continues to occupy a rental unit while waiting for a hearing. As such, I permitted the amendment.

The landlord also requested authorization to retain the tenant's security deposit in partial satisfaction of the unpaid rent. This request is non-prejudicial to the tenant since it would reduce the amount of a Monetary Order I may issue, and I permitted the amendment.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord entitled to a Monetary Order for unpaid and/or loss of rent and if so, what is the amount of loss?
3. Is the landlord authorized to retain the tenant's security deposit?

Background and Evidence

The tenancy started on January 1, 2020 and the landlord collected a security deposit of \$450.00. The tenant is required to pay rent of \$900.00 on the first day of every month.

The tenant paid the rent for January 2020 in full but failed to pay rent when due for February 2020. The manager served a 10 Day Notice to End Tenancy for Unpaid Rent on February 2, 2020 indicating an effective date of February 12, 2020 due to \$900.00 in rent that was outstanding as of February 1, 2020. The tenant did not vacate the rental unit or dispute the 10 Day Notice dated February 2, 2020. Rather, landlord's agent testified that the tenant paid \$225.00 on February 19, 2020.

The tenant did not pay rent for March 2020 and on March 2, 2020 the manager posted a 10 Day Notice to End Tenancy for Unpaid Rent on the door of the rental unit indicating an effective date of March 12, 2020 due to outstanding rent of \$1575.00 as of March 1, 2020. The tenant did not dispute the 10 Day Notice or vacate the rental unit. However, the tenant paid \$300.00 on March 25, 2020.

The landlord's agent submitted that since the payment of \$300.00 on March 25, 2020 the tenant has not made any other payments to the landlord, yet he continues to occupy the rental unit. The landlord did not serve the tenant with a 10 Day Notice for April 2020.

I noted that the reason the landlord's application made under the Direct Request procedure was sent to hearing is because the rental unit address on page 1 of the tenancy agreement did not include the name of the City/Town where the rental unit is located. The landlord's agent pointed out that the City/Town is identified on the last page of the tenancy agreement above the parties' signatures and it is indicated on the 10 Day Notices served upon the tenant.

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 provided no evidence to suggest the tenant had a legal right to withhold rent payable.

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.

It is important to note that due the COVID-19 pandemic, Ministerial Order No. 89 was issued, taking effect on March 30, 2020, prohibiting a landlord from serving a Notice to End Tenancy; however, the Notices to End Tenancy that are before me were served before March 30, 2020 and it remains before me to consider the validity of the Notices to End Tenancy and issue the appropriate Orders. Enforcement of the orders; however, may be impacted by the Ministerial Order No. 89.

Upon review of the tenancy agreement, the 10 Day Notices and in hearing from the landlord's agent, I accept that the City/town identified in the address of the rental unit is correct.

I accept the unopposed evidence before me that the tenant was required to pay rent of \$900.00 on the first day of every month for the rental unit and the tenant has failed to do so for the months of February 2020 onwards. I also accept that the landlord served two 10 Day Notices upon the tenant by posting on the door of the rental unit on February 2, 2020 and March 2, 2020. For purposes of making this decision, I have focused on the 10 Day Notice most recently issued on March 2, 2020.

Since the 10 Day Notice was posted to the door of the rental unit on March 2, 2020 it is deemed to be received by the tenant three days later in accordance with section 90 of the Act and the effective date automatically changes to read March 15, 2020.

Accordingly, I find the tenant had until March 10, 2020 to either pay all of the outstanding rent or file to dispute the 10 Day Notice. Since the tenant did neither, I find

the tenant is conclusively presumed to have accepted that the tenancy would end on March 15, 2020.

The tenant has not paid all of the outstanding rent after March 15, 2020 or rent for April 2020 and I find there is no issue as to whether the tenancy has been subsequently reinstated.

In light of the above circumstances, I find the tenancy has ended and the landlord is entitled to regain possession of the rental unit. I provide the landlord with an Order of Possession effective two (2) days after service upon the tenant.

With respect to the landlord's monetary claim, I find as follows. Based upon the unopposed evidence before me, I find the landlord entitled to recover from the tenant the unpaid rent for the months of February 2020 and March 2020 in the sum of \$1275.00 [\$900.00 + \$900.00 - \$225.00 payment - \$300.00 payment]. As the tenant continues to occupy the rental unit and has not paid any monies for his continued use, I find the tenant's actions, or lack thereof, has caused the landlord to suffer further loss of rent for April 2020. Accordingly, I further award the landlord loss of rent in the amount of \$900.00 for the month of April 2020.

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

In light of the above, the landlord is provided a Monetary Order to serve and enforce upon the tenant, calculated as follows:

Unpaid rent for February and March 2020	\$1275.00
Loss of rent for April 2020	900.00
Filing fee	100.00
Less: security deposit	<u>(450.00)</u>
Monetary Order	\$2275.00

Conclusion

The landlord is provided an Order of Possession effective two (2) days after service upon the tenant.

The landlord is authorized to retain the tenant's security deposit and is provided a Monetary Order for the balance of unpaid and/or loss of rent in the amount of \$2275.00

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: April 21, 2020

Residential Tenancy Branch