



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL-S, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on April 06, 2020 (the “Application”). The Landlord sought an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”). The Landlord also sought to recover unpaid rent, to keep the security deposit and reimbursement for the filing fee.

The Landlord attended the hearing. Nobody attended the hearing for the Tenant.

The Landlord advised at the outset that the Tenant vacated the rental unit April 30, 2020. The Landlord withdrew the request for an Order of Possession.

I explained the hearing process to the Landlord who did not have questions when asked. The Landlord provided affirmed testimony.

I had no evidence before me from either party. The Landlord advised that evidence had been uploaded online. The file does not show this.

I addressed service of the hearing package and Landlord’s evidence. The Landlord testified as follows. The hearing package and evidence were served on the Tenant April 11, 2020. The Landlord attended the rental unit and the Tenant was outside. The Landlord spoke to the Tenant and told her she had documents for her. The Tenant asked the Landlord not to come close and told the Landlord she would not personally take the documents because of the current pandemic. The Landlord told the Tenant she would post the documents to the door of the rental unit and the Tenant agreed to this.

The Landlord testified that she served a copy of the Notice, Proof of Service for the Notice and a copy of the written tenancy agreement on the Tenant as evidence.

There is no documentary evidence of service before me. Based on the undisputed testimony of the Landlord, I am satisfied the hearing package and evidence were posted to the door of the rental unit April 11, 2020. This is not normally a form of service permitted under section 89(1) of the *Residential Tenancy Act* (the “Act”). However, I am satisfied pursuant to section 71(2) of the *Act* that the form of service was sufficient in the particular circumstances given the Landlord spoke to the Tenant, told the Tenant she had documents for her and obtained the Tenant’s permission to post them on the door. In these circumstances, I am satisfied the Tenant was served with the documents on April 11, 2020. I find the Tenant was served with the hearing package and evidence in time to prepare for, and appear at, the hearing.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Landlord was given an opportunity to present relevant evidence and make relevant submissions. I have considered all oral testimony of the Landlord. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to recover unpaid rent?
2. Is the Landlord entitled to keep the security deposit?
3. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord testified as follows. There is a written tenancy agreement between the parties in relation to the rental unit. The tenancy started November 16, 2018 and was for a fixed term of one year. The tenancy then became a month-to-month tenancy. Rent was \$2,200.00 per month due on the first day of each month. The Tenant paid a \$1,100.00 security deposit. The agreement was signed by both parties.

The Landlord testified that the Notice stated that the Tenant owed \$2,200.00 in rent which was due November 01, 2019. The Landlord testified that the Notice was served on the Tenant February 11, 2020.

The Landlord testified that the Tenant only paid \$1,100.00 in rent for November of 2019 and did not pay any rent for December, January, February, March or April. The Landlord confirmed \$12,100.00 in rent is currently outstanding.

I asked the Landlord why all outstanding rent was not included on the Notice when it was issued in February. The Landlord replied that she did not know.

The Landlord testified that the Tenant did not have authority under the *Act* to withhold rent.

I asked the Landlord how the Tenant paid rent. The Landlord testified that the Tenant paid rent by e-transfer or cash. The Landlord testified that she did not issue receipts when the Tenant paid rent in cash. The Landlord testified that she did not keep a rent ledger.

Analysis

Section 7 of the *Act* states that, if a tenant does not comply with the *Act*, regulations or their tenancy agreement, the non-complying tenant must compensate the landlord for loss that results.

Section 26(1) of the *Act* requires a tenant to pay rent in accordance with the tenancy agreement unless they have a right to withhold rent under the *Act*.

Section 46 of the *Act* allows a landlord to end a tenancy when a tenant fails to pay rent.

The Landlord testified that evidence was uploaded online prior to the hearing. At first, I told the Landlord she could re-submit the evidence that was served on the Tenant. However, at the end of the hearing, I told the Landlord she did not need to submit the Notice, Proof of Service for the Notice or written tenancy agreement. I do not find it necessary to see the Notice given it does not reflect the full amount of rent outstanding in February. I do not find the Proof of Service for the Notice relevant given the Landlord withdrew the request for an Order of Possession. I am satisfied based on the Landlord's testimony that there was a written tenancy agreement between the parties and therefore did not ask the Landlord to re-submit it.

Based on the undisputed testimony of the Landlord, I am satisfied the Tenant was required to pay \$2,200.00 in rent by the first day of each month pursuant to the tenancy agreement between the parties.

Based on the undisputed testimony of the Landlord, I am satisfied the Tenant failed to pay \$1,100.00 of rent for November of 2019 and all of rent for December, January, February, March and April.

Based on the undisputed testimony of the Landlord, I am satisfied the Tenant did not have authority under the *Act* to withhold rent. I have no evidence before me that the Tenant did.

Pursuant to section 26(1) of the *Act*, the Tenant was required to pay \$2,200.00 in rent by the first day of each month from November to April. I am satisfied the Tenant failed to do so and that \$12,100.00 in rent is currently outstanding. I have considered this full amount pursuant to rule 4.2 of the Rules of Procedure. I am satisfied the Landlord is entitled to recover this amount.

As the Landlord was successful in the Application, I award the Landlord \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*.

The Landlord is entitled to monetary compensation in the amount of \$12,200.00. The Landlord can keep the \$1,100.00 security deposit pursuant to section 72(2) of the *Act*. Pursuant to section 67 of the *Act*, I issue the Landlord a Monetary Order for the remaining \$11,100.00.

Conclusion

The Landlord is entitled to monetary compensation in the amount of \$12,200.00. The Landlord can keep the \$1,100.00 security deposit. I issue the Landlord a Monetary Order for the remaining \$11,100.00. This Order must be served on the Tenant and, if the Tenant does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: May 26, 2020

Residential Tenancy Branch