



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with a landlords' application for an Order of Possession for unpaid rent; a Monetary Order for unpaid and loss of rent; and, authorization to retain the security deposit. The landlord appeared along with an authorized agent. There was no appearance on part of the tenants.

Since the tenants did not appear, I explored service of hearing documents upon the tenants.

The landlord provided registered mail receipts, including tracking numbers, to prove the hearing documents were sent to each of the three named respondents on March 30, 2020. The landlord's agent tracked the registered mail and determined that all three packages were delivered on April 1, 2020. The landlord testified that he was last at the residential property on April 19, 2020 and the rental unit continued to be occupied by the tenants or persons permitted on the property by the tenants. The landlord's agent testified that an agent drove by the property on May 6, 2020 and observed that the residential property is still occupied. Based on this evidence, I was satisfied the tenants were duly served with notification of this proceeding and I continued to hear from the landlord without the tenants present.

I noted that I was not provided a copy of a written tenancy agreement. The landlord testified that a written tenancy agreement was not executed. The landlord also stated that he orally entered into a tenancy agreement with two of the named respondents but the third named respondent was a roommate brought into the residence by the tenants and the landlord did not have an agreement with him. According to this information, I was not satisfied the third named respondent was a tenant bound by the terms of the tenancy agreement and I struck his name from the style of cause. The tenants' roommate shall be considered an "occupant" of the residential property.

The landlord's agent pointed out that a typographical error was made in the spelling of the landlord's name in filing this Application for Dispute Resolution. I have amended the style of cause to correctly reflect the landlord's name.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to a Monetary Order for unpaid and loss of rent, as claimed?
3. Is the landlord authorized to retain the tenants' security deposit?

Background and Evidence

The landlord testified that he entered into an oral tenancy agreement with the tenants for a tenancy set to commence on January 15, 2020. The landlord testified that the tenants were required to pay a security deposit of \$900.00 but they only paid him \$800.00 toward the deposit. The landlord testified that the tenants were not required to pay any rent for January 2020 but they were required to start paying the monthly rent of \$1900.00 on February 1, 2020 and on the first day of the month thereafter.

The landlord testified that the tenants failed to pay the rent that was due on February 1, 2020. The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") on February 2, 2020 indicating rent of \$2000.00 was outstanding as of February 1, 2020 and a stated effective date of February 15, 2020. The landlord testified that he served the 10 Day Notice to one of the tenants on February 2, 2020. The landlord submitted a copy of the 10 Day Notice and a Proof of Service signed by the landlord and a witness.

The landlord explained that he calculated the \$2000.00 that appears on the 10 Day Notice as the unpaid rent of \$1900.00 plus the balance of the security deposit that was not paid.

The landlord testified that the tenants did not pay any rent within five days of serving the 10 Day Notice. However, the tenants paid the landlord \$800.00 on February 24, 2020 and the occupant provided the landlord with \$600.00 on February 25, 2020. No other rent or monies has been received by the landlord.

The landlord seeks an Order of Possession effective as soon as possible. The landlord's agent had also applied for unpaid rent for January 2020 in the amount of \$100.00 and unpaid and/or loss of rent for February 2020 through May 2020 in the amount of \$2000.00 per month.

Analysis

The Act applies to tenancy agreements between a landlord and a tenant with respect to residential rental units and residential property. The definition of tenancy agreement in section 1 of the Act includes tenancy agreements that were entered into orally. As such, I find the Act applies to the oral agreement entered into by the parties in January 2020.

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.

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 should be noted that on March 30, 2020 an Order was issued by the Minister of Public Safety and Solicitor General under the *Emergency Program Act* suspending a landlord's right to issue a Notice to End Tenancy due to the state of emergency as a result of the Covid-19 pandemic ("Minister's Order"). However, the Notice to End Tenancy before me pre-dates the Minister's Order and, as provided in the Minister's Order, the Notice to End Tenancy remains in effect and the landlord may be provided an Order of Possession based upon the Notice to End tenancy under section 55 of the Act.

I accept the unopposed evidence before me that the tenants were required to pay rent of \$1900.00 on the first day of every month starting February 1, 2020 and every month thereafter until the tenancy ends and the tenants failed to do so. I also accept that the tenant was personally served with the 10 Day Notice on February 2, 2020. Accordingly, I find the tenants had until February 7, 2020 to either pay the outstanding rent or file to

dispute the 10 Day Notice. Since the tenants did neither, I find the tenancy ended on the stated effective date of February 15, 2020.

The landlord received a total of \$1400.00 on February 24, 2020 and February 25, 2020; however, that sum did not even satisfy the outstanding rent for February 2020 and I find there is no reinstatement of the tenancy. Therefore, I find the landlord is entitled to regain possession of the rental unit and I provide the landlord with an Order of Possession effective two (2) days after service upon the tenants.

Based upon the unopposed evidence before me, I find the landlord entitled to recover from the tenants the remaining balance of unpaid rent of \$500.00 for February 2020. I find the landlord not entitled to unpaid rent for January 2020 since the tenancy agreement did not require the tenants to pay any rent for January 2020. Since the tenants did not return possession of the rental unit to the landlord despite the end of the tenancy, I find the tenants' actions, or lack thereof, have caused the landlord to suffer further loss of rent for the months of March 2020 through May 2020 and I award the landlord recovery of the loss of \$1900.00 for each of these months.

I authorize the landlord to retain the tenants' security deposit in partial satisfaction of the amounts awarded to the landlord with this decision. 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 tenants, calculated as follows:

Balance of unpaid rent for February 2020 (\$1900.00 - \$1400.00)	\$ 500.00
Loss of rent for March 2020 – May 2020 (\$1900.00 x 3)	5700.00
Filing fee	100.00
Less: security deposit	<u>(800.00)</u>
Monetary Order	\$5500.00

Conclusion

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

The landlord is authorized to retain the tenants' security deposit and is provided a Monetary Order for the balance of \$5500.00 to serve and enforce upon the tenants.

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: May 20, 2020

Residential Tenancy Branch