



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL, FFL

Introduction

This hearing was scheduled for 9:30 a.m. on this date, via teleconference call, to deal with the landlord's application for an Order of Possession and Monetary Order for unpaid rent. The landlord appeared for the hearing; however, there was no appearance on part of the tenant despite leaving the teleconference call open at least 20 minutes to give the tenant the opportunity to appear.

Since the tenant did not appear, I explored service of hearing documents upon the tenant. The landlord testified that he sent the proceeding documents to the tenant via email on May 7, 2020 at 12:12 p.m. using the email address the tenant ordinarily uses to communicate with the landlord. Service by email is a permissible method of service pursuant to the Director's Order issued on March 30, 2020. I was satisfied the tenant was duly served with notification of this proceeding and I continued to hear from the landlord without the tenant present.

In filing this Application for Dispute Resolution in May 2020 the landlord requested compensation for unpaid and/or loss of rent for the months up to and including the month of May 2020. The landlord testified the tenant is still occupying the rental unit. The landlord requested the monetary claim be amended to include loss of rent for the month of June 2020. An application may be amended during the hearing where the circumstances are such that the request is reasonably foreseeable. Where a tenant continues to occupy the rental unit while awaiting the hearing, I find it reasonably foreseeable that the landlord would request the monetary claim be amended to include the months up to and including the month of the hearing. Therefore, I granted the landlord's request and amended the claim accordingly.

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.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord entitled to Monetary Order for unpaid and/or loss of rent, as requested?
3. Recovery of the filing fee.

Background and Evidence

The tenancy started on June 1, 2019 and the tenant was required to pay rent of \$900.00 on the first day of every month. The tenant did not pay and the landlord did not collect a security deposit for this tenancy.

The tenant failed to pay rent for February 2020 and on February 25, 2020 the landlord's father personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") at the tenant's place of employment, a large department store. The landlord's father was accompanied by his girlfriend in serving the tenant. The landlord's father and the father's girlfriend signed a Proof of Service with respect to serving the 10 Day Notice upon the tenant.

The 10 Day Notice indicates rent of \$900.00 was outstanding on February 1, 2020 and has a stated effective date of March 6, 2020. The landlord testified the tenant did not pay the outstanding rent for February 2020 after the 10 Day Notice was served; the tenant did not file to dispute the 10 Day Notice; and, the tenant has not paid any monies for the tenant's continued occupancy of the rental unit for the subsequent months.

The landlord requested an Order of Possession effective as soon as possible and a Monetary Order for unpaid and/or loss of rent for the months of February 2020 through June 2020.

The landlord provided a copy of the tenancy agreement; the 10 Day Notice; a signed Proof of Service for the 10 Day notice; and, various email exchanges between the parties as documentary evidence for my consideration.

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.

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 tenant was required to pay rent of \$900.00 on the 1st day of every month and the tenant failed to do so for the month of February 2020 onwards. I also accept that the tenant was personally served with a 10 Day Notice on February 25, 2020. Accordingly, I find the tenant had until March 1, 2020 to either pay the outstanding rent or file to dispute the 10 Day Notice. Since the tenant did neither, I find the tenancy ended on the stated effective date of March 6, 2020. 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 tenant.

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. I further find the landlord entitled to recover loss of rent incurred for the months of April 2020 through June 2020 since the tenant has not vacated the rental unit or paid for his ongoing occupancy, causing the landlord to suffer further losses for these months.

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:

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| Unpaid and loss of rent for February 2020 – June 2020 | \$4,500.00 |
| Filing fee | <u>100.00</u> |
| Monetary Order | \$4600.00 |

Conclusion

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

The landlord is provided a Monetary Order for unpaid and/or loss of rent, plus recovery of the filing fee, in the sum of \$4,600.00 to serve and enforce upon 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: June 09, 2020

Residential Tenancy Branch