



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, MNRL-S, MNDL-S, FFL

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- an order of possession for “breach of an agreement” pursuant to sections 44 and 55 of the *Act*;
- a monetary compensation for unpaid rent and/or utilities – security deposit applied to the claim pursuant to section 67 of the *Act*.
- recovery of the filing fee pursuant to section 72 of the *Act*.

The landlord ZP attended the hearing and was given the opportunity to make submissions as well as present affirmed testimony and written evidence.

The landlord testified the tenant was served the Notice of Dispute Resolution together with the evidentiary package via Canada Post registered mail on June 03, 2020. I find this satisfies the service requirements set out in sections 88 and 89 of the *Act*, and find the tenant was deemed to have received the documents in accordance with section 90 of the *Act* on June 08, 2020. Canada Post tracking number is listed on the first page of this decision.

The tenant did not appear at the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional ten minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant codes for the landlord had been provided.

Rule of Procedure 7.3 states:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the Arbitrator may conduct the Dispute Resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply. I proceeded with the hearing.

Issue(s) to be Decided

Is the landlord entitled to an order of possession pursuant to sections 44 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

This tenancy commenced on July 1, 2019 as a fixed term tenancy. The landlord testified that monthly rent in the amount of \$850.00 was payable on the first day of each month. The landlord testified that the tenant paid a security deposit of \$420.00 at the beginning of the tenancy which is held in Trust by the landlord. This fixed term tenancy ends on June 30, 2020.

The tenant has failed to pay any rent for the months of April, May and June 2020. The landlord affirmed that is also seeking a monetary order for unpaid rent for the sum of \$2,550.00 and to apply the security deposit for the sum of \$420.00 held in Trust.

The landlord affirmed he is seeking an order of possession based on the fact the fixed term tenancy is due to end on June 30, 2020. The landlord ticked of box 2 (e) in the tenancy agreement, ending a fixed term tenancy under section 13.1 of the Regulations.

The landlord affirmed and submitted a copy of a letter dated May 7, 2020 in evidence and forwarded the tenant an email requesting the payment of the rent arrears and the fact that the tenant had been late in his payments for the months of December 2019 and January, February 2020.

Analysis

Is the landlord entitled to an Order of Possession?

Section 44 (1) of the Act states, among other reasons, that a tenancy ends if the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term.

Section 44(3) goes on to say that if the date specified in a fixed term tenancy agreement does not require the tenant to vacate the rental unit on that date and the parties have not signed a new tenancy agreement the tenancy will continue under the same terms of the original tenancy agreement but on a month to month basis.

Section 97(2) (a.1) of the Act stipulates authority to make regulations that prescribe the circumstances in which a landlord may include in a fixed term tenancy agreement a requirement that the tenant vacate a rental unit at the end of the term.

Residential Tenancy Regulation 13.1 states that the only allowable reason to end a fixed term tenancy is if the landlord or a close family member of the landlord intends in good faith at the time of entering into the tenancy agreement to occupy the rental unit at the end of the term.

The landlord ticked of box 2 E in the tenancy agreement, ending a fixed term tenancy under section 13.1 of the Regulations. The landlord also wrote that the reason the tenant must vacate is because it is “end of term”.

As there is no indication in the tenancy agreement that the landlord intended, at the time of signing the agreement, that the landlord or his close family member intended to move into the rental unit and the landlord provided no testimony that he or any close family members are moving into the rental unit, I find that the fixed term tenancy converted to a month to month tenancy effective July 1, 2020 and the landlord cannot end the tenancy based on the tenancy agreement, pursuant to Section 44 of the Act. As such, I order the tenancy will continue and the landlord is not entitled to an order of possession. I dismiss this portion of the landlord’s Application for Dispute Resolution.

Based on the landlord’s testimony and the application before me, I find that the tenant was served with the letter dated May 7, 2020 and an email by the landlord. The

contents of the letter submitted in evidence informed the tenant that he was late in his rent payments and was in arrears for the months of April and May 2020. The tenant failed to attend the hearing or dispute the monetary application for the rent and security deposit.

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

(2) A landlord must provide a tenant with a receipt for rent paid in cash.

(3) Whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not

(a) seize any personal property of the tenant, or

(b) prevent or interfere with the tenant's access to the tenant's personal property.

(4) Subsection (3) (a) does not apply if

(a) the landlord has a court order authorizing the action, or

(b) the tenant has abandoned the rental unit and the landlord complies with the regulations.

Therefore, pursuant to sections 26 and 67 of the Act, I grant the landlord the monetary award of \$2,130.00 representing the rent from April to June 2020, deducting the security deposit.

Section 72(2) states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit due to the tenant.

I find that the landlord is entitled to retain the tenant's entire security deposit in the amount of \$420.00 in partial satisfaction of their monetary claim against the tenant.

ITEM	AMOUNT
April 2020 rent	\$850.00
May 2020 rent	\$850.00
June 2020 rent	\$850.00
Less security deposit	(\$420.00)
Total monetary amount to landlord.	\$2,130.00

As the landlord has been successful in this application, I find that he is entitled to recover the \$100.00 filing fee from the tenant pursuant to section 72 of the *Act*.

I grant a monetary order for the sum of **\$2,230.00** for the unpaid rent, including the \$100.00 filing fee pursuant to section 67 of the *Act*.

Conclusion

I grant a monetary order for the sum of **\$2,230.00** for the unpaid rent, including the \$100.00 filing fee pursuant to section 67 and 72 of the *Act*.

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of the 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 *Residential Tenancy Act*.

Dated: July 13, 2020

Residential Tenancy Branch