



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNRL-S, FFL

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

The landlord's agent (the landlord) attended the hearing via conference call and provided undisputed affirmed testimony. The tenants did not attend or submit any documentary evidence. The landlord stated that the tenants were served with the notice of hearing package by both posting it on the rental unit door and placing a copy in the mailbox on July 16, 2020. The landlord provided a witness, R.D. who confirmed in his affirmed testimony that the package was served by posting it to the rental unit door and placing a copy in the mailbox on July 16, 2020 with a witness. The landlord also stated that the submitted documentary evidence was served to the tenants on July 17, 2020 by posting a copy on the rental unit door and another copy in the mailbox. The landlord provided a witness, R.D. who confirmed in his affirmed testimony that the package was served by posting it to the rental unit door and placing a copy in the mailbox on July 17, 2020 with a witness.

I accept the undisputed affirmed evidence of the landlord and find that the tenants were sufficiently served as per sections 88 and 89 of the Act. Although the tenants failed to attend, the hearing commenced and ended after 32 minutes. The tenants are deemed served as per section 90 of the Act.

At the outset, the landlord's application was clarified. The landlord confirmed that she seeks an order of possession and an amended monetary claim of \$2,000.00 as a 10 Day Notice to End Tenancy was issued on February 21, 2020 prior to the state of emergency. The landlord clarified that the \$2,000.00 sought is for January and February unpaid rent which is not "affected rent"

#### Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

#### Background, Evidence and Analysis

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The landlord stated that a 10 Day Notice for Unpaid Rent (the 10 Day Notice) dated February 21, 2020 was served to each of the two tenants on February 21, 2020 via email. The 10 Day Notice states that the tenants failed to pay rent of \$2,000.00 that was due on February 1, 2020 and provides for an effective end of tenancy date of March 2, 2020.

The landlord submitted copies of two emails dated February 21, 2020 to the tenants which mentions the 10 Day Notice and displays two attachments (the 10 Day Notice and a Statement of Account" as confirmation of service for the 10 Day Notice.

The landlord stated that the tenants failed to pay rent for January 2020 and February 2020 at \$1,000.00 per month which was due on the 1<sup>st</sup> day of each month as per the 10 Day Notice. The landlord clarified that a late payment of \$1,500.00 was made on April 20, 2020 and a subsequent late payment of \$1,000.00 was made on May 8, 2020. Discussions with the landlord's agent shows the "Statement of Account" provided shows confirms that these payments were applied to the unpaid rent for January and February 2020. The landlord confirmed on this basis that no rent is owed for that period of time. As such, the landlord's monetary claim for \$2,000.00 in unpaid rent for January and February 2020 is dismissed.

The landlord also confirmed that upon receipt of the two late payments on April 20, 2020 and May 8, 2020, a notice for use and occupancy only were not issued to the tenants.

Residential Tenancy Branch Policy Guideline #11, Amendment and Withdrawal of Notice(s) states in part,

*Express waiver happens when a landlord and tenant explicitly agree to waive a right or claim. With express waiver, the intent of the parties is clear and unequivocal. For example, the landlord and tenant agree in writing that the notice is waived and the tenancy will be continued.*

***Implied waiver happens when a landlord and tenant agree to continue a tenancy, but without a clear and unequivocal expression of intent. Instead, the waiver is implied through the actions or behaviour of the landlord or tenant.***

*For example, if a landlord gives a notice to end tenancy, a landlord may accept rent from the tenant for the period up to the effective date of the notice to end tenancy without waiving the notice. However, if the landlord continues accepting rent for the period after the effective date but fails to issue rent receipts indicating the rent is for “use and occupancy only,” it could be implied that the landlord and tenant intend for the tenancy to continue.*

In this case, the landlord confirmed that the 10 Day Notice dated February 21, 2020 shows an effective end of tenancy date of March 2, 2020. The landlord also confirmed that a late rent payment was received on April 20, 2020 and again on May 8, 2020 without issuing notice to the tenancy for “Use and Occupancy Only” or that the landlord was still seeking an end to the tenancy. As such, I find that the landlord failed to give notice of its intent to end the tenancy after receiving two late rent payments after the effective end of tenancy date. On this basis, the landlord’s application for an order of possession is dismissed.

### Conclusion

The landlord’s application is dismissed without leave to reapply.

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: August 21, 2020