



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPC, 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 Cause pursuant to sections 47 and 55;
- A monetary order for rent and/or utilities and authorization to retain a security deposit pursuant to sections 38 and 67; and
- Authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference connection open until 11:30 a.m. to enable the tenant to call into this hearing scheduled for 11:00 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord testified that the tenant was served the Notice of Hearing package via registered mail to the tenant's residential address on July 11, 2020. The landlord provided a tracking number, recorded on the cover page of this decision. I find the tenant has been deemed served with the Notice of Hearing package five days later, on July 16, 2020 in accordance with sections 89 and 90 of the *Act*.

Preliminary Issue

Rule 4.2 states that in circumstances that can be reasonably anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. At the hearing, the landlord sought to amend his application to seek rent for the months of April through August 2020 and the amendment was allowed in accordance with Rule 4.2

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary order for rent and can he retain the security deposit?

Can the landlord recover the filing fee?

Background and Evidence

The landlord gave the following undisputed testimony. The rental unit is a half-duplex, single family home. Rent was set at \$2,300.00 per month payable on the first day of the month. A security deposit of \$1,150.00 was collected by the landlord which he continues to hold.

On March 16, 2020, the landlord served the tenant with a One Month Notice To End Tenancy for Cause by sending it via registered mail. The landlord provided proof of service of the notice as evidence, as well as provided a tracking number for the mailing. The landlord testified the tenant did not file an application to dispute the notice. On July 9, 2020, the landlord filed his application for an Order of Possession based on the One Month Notice To End Tenancy for Cause.

The landlord testified that on August 6, 2020, the tenant sent the landlord a text message indicating she will be '*completely out of [the landlord's] home tomorrow*'. On August 8, 2020, the landlord put a notice on the tenant's door advising that he would be conducting an inspection on August 12th between 1 and 8 p.m. When the landlord attended on August 12th, the rental unit was completely empty, but was left unreasonably clean and the unit had sustained some damage. Damage included picture holes requiring filling, broken cabinet doors and broken blinds requiring fixing. All this work had to be done before the unit could be re-rented. Some of the tenant's possessions were left behind in the carport of the rental unit, as well.

A neighbour advised the landlord that the tenant had moved out on August 7th and hasn't been back since.

Analysis

Pursuant to section 44(1)(a) of the Act, a tenancy ends when the tenant vacates or abandons the rental unit. I find the tenancy ended when the tenant abandoned the rental unit on August 7, 2020 pursuant to section 44(1)(a).

As the tenancy has ended, the landlord's application for an Order of Possession is dismissed without leave to reapply.

With regards to unpaid rent, section 26 of the *Act* is clear: 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.

I find that the tenant had no right to deduct any portion of the rent. The tenant failed to pay rent for the months of April, May, June and July 2020. The tenant abandoned the unit on the 7th of August 2020, depriving the landlord of the ability to re-rent the unit for the month of August. The landlord has also provided undisputed testimony that the unit was not reasonably clean and had sustained damage at the end of the tenancy. I award the landlord rent for the month of August, 2020, as well. Pursuant to section 67 of the *Act*, the landlord is awarded \$11,500.00. (\$2,300.00 x 5 = \$11,500.00).

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application. The landlord continues to hold the tenant's security deposit in the amount of \$1,150.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord retain the entire security deposit in partial satisfaction of the monetary claim.

Item	Amount
Rental Arrears (April to August)	\$11,500.00
Filing fee	\$100.00
Less security deposit	(\$1,150.00)
Total	\$10,450.00

Conclusion

The landlord's application for an Order of Possession is dismissed without leave to reapply.

I issue a monetary order in the landlord's favour in the amount of **\$10,450.00**.

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 14, 2020

Residential Tenancy Branch