



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act, (the “Act”), for an order of possession, for a monetary order for unpaid rent, to keep the security deposit and pet damage to deposit and an order to recover the cost of filing the application from the tenants.

Both parties appeared, gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing

Issues to be Decided

Is the landlord entitled to an order of possession?
Is the landlord entitled to a monetary for unpaid rent?
Is the landlord entitled to recover the cost of the filing fee?

Background and Evidence

The parties agreed that the tenants were served with a Two Month Notice to End Tenancy for Landlord’s Use of Property, issued on March 13, 2020.

The landlord’s agent testified that the tenants were served with the Notice. The agent stated that the tenants did not dispute the Notice and was required to vacate the premise.

The landlord's agent testified that the tenants did not pay the rent for April 2020, as they said to keep the security deposit and pet damage deposit; however, the tenants did not have the right to apply their deposits without the consent of the landlord.

The landlord's agent testified that the tenants did not pay rent for May 2020, as that was their compensation for accepting the Notice. The agent stated that the rent was paid for July and August 2020.

The landlord's agent testified that since the tenants paid occupancy rent they are agreeable for an order of possession to be effective on August 31, 2020.

The tenant testified that the Notice was issued on March 13, 2020, which they received; however, that day automatically corrects to March 31, 2020, as the landlord was not entitled to issue the order until the day before rent was due, which would mean the landlord was not entitled to issue the Notice as the state of emergency order came into effect March 30, 2020.

The tenant testified that the effective date of the Notice is May 15, 2020; however, that should be May 31, 2020, as that automatically correct to May 31, 2020.

The tenant acknowledged they did not pay rent for April 2020 and told the landlord to keep the deposits.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the evidence of both parties that the tenants received the Notice in person on March 13, 2020, which was the day the notice was issued by the landlord. The tenants did not dispute the Notice as required by the Act and is conclusively presumed under the Act to have accepted the tenancy ends on the effective date of the Notice.

In this matter, the tenant states that the date the Notice was issued automatically corrects to March 31, 2020, and due to the Ministerial Order issued on March 30, 2020, is invalid as the landlord was not entitled to issue the Notice. I do not accept the tenant's submission on this point. At no time does the date that a legal document is sign change, and there is no provision under the Act to do so. I find the landlord was

entitled to issue the Notice as it was issued on March 13, 2020, prior to the Ministerial Order.

However, I do accept that the effective date to end the tenancy on May 15, 2020 was incorrect; however, that date would automatically change to May 31, 2020, pursuant to section 53 of the Act. **I find the tenancy legally ended on May 31, 2020.** The tenant was given more than the required 2 months notice to vacate. I find the tenants are now overholding the premise as occupants.

I accept that the Notice was completed in accordance with Part 4 of the Act - How to End a Tenancy, pursuant to section 49 of the Act. A copy of the Notice was filed in evidence for my review and consideration.

I find the Notice was completed in the approved form and the contents meets the statutory requirements under section 52 the Act.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act. As the landlord has accepted occupancy rent, I find the landlord is entitled to an order of possession, effective at **1:00 PM on August 31, 2020.** A copy of this order must be served upon the tenants. This order may be filed in the Supreme Court and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

I find that the tenant did not pay rent for April 2020, I find the tenants breached the Act when they failed to pay the rent for April 2020. A tenant is not entitled to use their deposits, without the express consent of the landlord. I find the landlord is entitled to recover unpaid rent for April 2020, in the amount of **\$973.00.**

I find that the landlord has established a total monetary claim of **\$1, 073.00** comprised of the above amount and the \$100.00 to recover the filing fee from the tenants for this application.

I order that the landlord to retain the security deposit of **\$475.00** and the pet damage deposit of **\$475.00** in partial satisfaction of the claim and I grant the landlord a formal order for the balance due of **\$123.00.** This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

Conclusion

The tenants failed to dispute the Notice. The tenants are presumed under the law to have accepted that the tenancy ended on the effective date of the notice to end tenancy.

The landlord is granted an order of possession. The landlord is granted a monetary order for the balance due as show above.

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 18, 2020

Residential Tenancy Branch