



# 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 unpaid rent and authorization to retain the tenants' security deposit pursuant to sections 7, 26, 67 and 72;
- recovery of the cost of filing this application from the tenants pursuant to section 72.

The hearing commenced on time and the landlord was present; he affirmed he would provide only true information during the hearing. Although I left the teleconference bridge open for 15 minutes after the hearing began, the tenants did not call into the hearing.

The landlord provided proof of in-person service of both the notice to end tenancy (RTB form #34) and the dispute resolution application into evidence (declaration of witness to the service). The landlord confirmed he gave the dispute resolution application to each one of the tenants.

I find the tenants received the notice to end tenancy on July 12, 2020 pursuant to section 88(1)(a) of the Act and the dispute resolution application on July 25, 2020 pursuant to section 89(1)(a) of the Act.

As the respondents have been properly notified of the hearing of this matter, pursuant to Rule of Procedure 7.3 the hearing was conducted in the absence of the respondents.

### Preliminary matter

At the hearing the landlord asked to recover additional unpaid rent that has accumulated since he filed for dispute resolution on July 23, 2020. As the respondents should have anticipated the landlord would increase his monetary claim against them if they continued to occupy the rental unit without paying rent, pursuant to section 64(3)(c) of the Act and Rule of Procedure 4.2, I amend the landlord's monetary claim from \$4,000.00 to \$4,800.00.

### Issues to be Decided

- Is the landlord entitled to an order of possession for cause?
- Is the landlord entitled to retain the tenants' security deposit and obtain a monetary order for \$4,800.00 in unpaid rent?
- Is the landlord entitled to recover from the tenants the \$100.00 cost of filing this application?

### Background and Evidence

The landlord confirmed the respondents are still occupying the unit and he needs an order of possession and the locks changed because they are not paying rent, provided unreliable information about employment status and are parking in his driveway.

The rental unit is a one bedroom basement suite. He entered into a verbal tenancy agreement with the respondents on November 28, 2019. They paid him a \$400.00 security deposit which he still holds in trust. The agreement is that rent, which includes utilities, is \$800.00 due on the 30<sup>th</sup> day of the prior month. The tenants are a married couple and the agreement is that no one other than the tenants will occupy the rental unit and they must park their vehicles on the street, not in the driveway.

The tenants moved some of their belongings into the landlord's garage without his permission to do so on November 29, 2019. Although rent was due on November 30<sup>th</sup> the tenants did not pay it until they moved into the rental unit on December 4<sup>th</sup>. The tenants have been late paying rent for every month of the tenancy for which they have paid rent:

- rent due on November 30, 2019 was paid on December 4, 2019.
- rent due on December 30, 2019 was paid on January 6, 2020.
- rent due on January 30, 2020 was paid on February 10, 2020.

The landlord repeatedly asked the tenants to pay the rent on the 30<sup>th</sup> but they did not. The landlord used RTB form #33 for the notice to end tenancy and listed other causes in addition to the late payment of rent. The notice was issued on July 12, 2020, signed by the landlord and gives the address of the rental unit. The effective date of the notice is August 30, 2020. There are details explaining all the causes listed in the notice and the landlord testified to them.

No rent has been paid since February 10, 2020. The landlord is seeking to recover rent for March, April, May, June, July and August 2020.

### Analysis

I accept the landlord's testimony that there is a verbal tenancy agreement in place with the respondents who are his tenants and they are required to pay \$800.00 rent on the 30<sup>th</sup> day of the prior month to occupy the rental unit.

I accept the landlord's testimony that the tenants were late paying rent for every month of the tenancy before they stopped paying rent altogether. As section 47(2) provides for repeatedly late payments of rent as cause to end the tenancy, I find the landlord has cause to issue the notice. The form and content of the notice conforms to section 52 of the Act and there are enough details for the tenants to understand why and when landlord wants to end the tenancy.

The tenants have not filed to dispute the notice and the time for making that application has expired. The tenants are presumed to have accepted the end of the tenancy pursuant Section 47(5) of the Act which states

If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit by that date.

I award the landlord an order of possession pursuant to section 55 of the Act.

Section 26 of the Act requires the tenants to pay rent when it is due under the tenancy agreement. I accept the landlord's uncontested testimony that the tenants have not paid

rent since February 10, 2020 and currently owe \$4,800.00 for March, April, May, June, July and August 2020. The landlord has applied to retain the tenants' security deposit to decrease the amount of rent owed and I allow this pursuant to section 72(2) of the Act and award him \$4,400.00 pursuant to section 67 of the Act for the remaining unpaid rent.

The landlord is successful in his application and is awarded the filing fee pursuant to 72(1) of the Act.

### Conclusion

I authorize the landlord to retain the tenants' \$400.00 security deposit for unpaid rent.

I issue a monetary order to the landlord for \$4,500.00 for unpaid rent and filing fee.

A decision or an order of the director may be filed in the Supreme Court and enforced as a judgment or an order of that court after a review of the director's decision or order has been refused or dismissed, or concluded, or the time period to apply for a review has expired.

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: September 1, 2020

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Residential Tenancy Branch