



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPC, MNRL-S

Introduction

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

- an Order of Possession pursuant to section 55; and
- a monetary order for unpaid rent and utilities pursuant to section 67.

The tenant did not attend this hearing which lasted approximately 10 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The landlord was represented by their family member (the "landlord") who was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that they served the tenant with the application and evidence by registered mail sent on August 14, 2020. The landlord provided a valid Canada Post tracking receipt as evidence of service. Based on the evidence I find that the tenant is deemed served with the landlord's materials on August 19, 2020, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award as claimed?

Background and Evidence

This periodic tenancy began in February 2020. The monthly rent is \$1,700.00 payable on the first of each month. The tenant is also responsible for paying a portion of the

utilities for the rental building. A security deposit of \$850.00 was collected at the start of the tenancy and is still held by the landlord.

The landlord submits that the tenant has failed to pay the full rent by the due date beginning in March and every month thereafter. The landlord issued a 1 Month Notice to End Tenancy for Cause dated July 2, 2020 indicating the reason for the tenancy to end is that the tenant has been repeatedly late paying rent. The 1 Month Notice was personally served on the tenant on July 2, 2020. The landlord is unaware of the tenant filing any application to dispute the notice.

The landlord submits that the tenant has failed to pay rent and utilities as required under the tenancy agreement and, as at August 3, 2020 the date the application was filed, there was an arrear of \$3,680.00. The landlord testified that they have not issued the tenant any repayment plan.

Analysis

The COVID-19 (Residential Tenancy Act and Manufactured Home Park Tenancy Act) (No. 2) Regulation ("C19 Tenancy Regulation") provides in sections 3 that landlord must not give a tenant notice to end a tenancy in respect of affected rent that is unpaid. Affected rent is defined as rent that becomes due to be paid by a tenant in accordance with a tenancy agreement during the period of March 18, 2020 and August 17, 2020.

In the present circumstances the landlord submits that the tenant was late paying the monthly rent due on March 1, 2020 and every month thereafter. While the rent payable on March 1, 2020 is not affected rent as defined in the C19 Tenancy Regulation the rent payable for the subsequent months can not form the basis of a notice to end tenancy.

Residential Tenancy Policy Guideline 38 provides that three late payments are the minimum number to justify a notice to end tenancy. I find that the only late payment that is outside of the affected rent is the rent that was payable on March 1, 2020. I further note that the landlord has failed to provide substantive documentary evidence showing any of the payments made for this tenancy. The landlord did not provide any receipts, ledgers or records to establish that the rent was not paid on time in accordance with the tenancy agreement. Regardless, I find that a singular late payment to be insufficient to form the basis for ending a tenancy. Accordingly, as I find that the landlord has not shown cause for the issuance of a 1 Month Notice, I decline to issue an Order of Possession. I dismiss this portion of the landlord's application.

The landlord claims a monetary award for unpaid rent and utilities. The landlord provided little documentary evidence showing the arrears for this tenancy, how the amount they are seeking was calculated or whether they have made written demand for the payment of utilities as required under the *Act*. Nevertheless, I accept the landlord's submission that the arrears arise from the period between March 18, 2020 and August 17, 2020 and that the landlord has not given the tenant a repayment plan nor is there a prior agreement that has been entered by the parties.

Accordingly, as the landlord has failed to issue a repayment plan as required under the C19 Tenancy Regulations I find that it is premature for the landlord to seek a monetary award and dismiss this portion of the application with leave to reapply.

Conclusion

The landlord's application for an Order of Possession is dismissed without leave to reapply. The 1 Month Notice of July 2, 2020 is cancelled and of no further force or effect.

The landlord's application seeking a monetary award is dismissed with 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: September 10, 2020

Residential Tenancy Branch