



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MND, FFL

Introduction

On August 6, 2020, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for an order of possession for the rental unit; a monetary order for unpaid rent; a monetary order for money owed or compensation for damage or loss; to keep a security deposit; and to recover the cost of the filing fee.

The matter was set for a conference call hearing. The Landlord attended the teleconference hearing; however, the Tenants did not. The Landlords were assisted by their agent. The line remained open while the phone system was monitored for fifteen minutes and the Tenants did not call into the hearing during this time.

The Landlord’s agent provided affirmed testimony that the Tenants were served the Notice of Dispute Resolution Proceeding by posting the Notice to the door of the rental unit on August 14, 2020 at 8:34 pm.

Based on the affirmed testimony before me, I find that the Tenants has been duly served with notice of the hearing in accordance with section 89 of the *Act*.

The Landlord was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Issues to be Decided

- Is the Landlord entitled to an order of possession due to unpaid rent?
- Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss?
- Is the Landlord entitled to keep the security deposit?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord testified that the tenancy began in 2014 and is on a month to month basis. Rent in the amount of \$3,000.00 is to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit in the amount of \$1,200.00.

The Landlord testified that the Tenants did not pay all the rent owing under the tenancy agreement for the month of March 2020. The Landlord testified that the Tenants failed to pay \$1,500.00 for March 2020 rent.

The Landlord testified that the Tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 21, 2020 ("the 10 Day Notice"). The Landlord testified that the 10 Day Notice was served in person to the Tenant on March 21, 2020. The 10 Day Notice has an effective date of March 31, 2020.

The 10 Day Notice indicates that the Tenant has failed to pay rent in the amount of \$1,500.00 which was due on March 15, 2020. The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

The Landlord testified that the Tenant did not pay the rent owing within five days of receiving the 10 Day Notice. The Landlord testified that \$1,500.00 was paid to the Landlord on March 27, 2020 which is beyond the five-day period permitted under the legislation.

The Landlord testified that it is unclear whether or not the Tenants abandoned the rental unit two weeks ago. The Landlord testified that the police have become involved in this dispute. There is a concern from the Landlord that the Tenants may return to the unit.

The Landlord seeks an order of possession for the rental unit.

Money Owed or Compensation for Damage or Loss

The Landlord testified that the Tenants have failed to pay the rent owing under the tenancy agreement for the months of April; May; June; July; and August 2020. The Landlord testified that the only rent payment he received from the Tenants during this period was a \$500.00 payment made on May 3, 2020. The Landlord testified that this rent payment was accepted for use and occupancy only.

The Landlord is seeking a monetary order for unpaid rent in the amount of \$14,500.00.

October 2020 Rent

The Landlord withdrew the claim to recover a loss of October 2020 rent.

Security Deposit

The Landlord is seeking to keep the security deposit of \$1,200.00 towards the claim for unpaid rent.

Analysis

I note that on March 30, 2020 the Minister of Public Safety and Solicitor General declared a state of emergency because of the COVID -19 pandemic. The Ministerial Order M089 provides that a Landlord must not issue a notice to end tenancy while the Order is in effect. The Order applies from March 30, 2020 and ends on the date on which the state of emergency declared March 18, 2020 expires or is cancelled.

Ministerial Order M195 issued June 24, 2020, pursuant to the State of Emergency declared on March 18, 2020 provides that affected rent is rent that is due and payable during the emergency period / state of emergency (March 18, 2020 on onward) The Order provides that Landlords cannot evict Tenants for unpaid rent relating to affected rent; however, the Order no longer prohibits a Landlord from issuing a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities if the rent arrears were accrued prior to March 18, 2020.

Section 26 of the Act provides that 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.

Section 46(5) of the Act provides that if a Tenant who has received a notice under this section does not pay the rent within five days or make an application for dispute resolution, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.

Section 55 (2)(b) of the Act provides that a Landlord may request an order of possession of a rental unit by making an application for dispute resolution when a notice to end the tenancy has been given by the Landlord, and the Tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired. In the circumstances described in 55 (2)(b), the director may, without any further dispute resolution process grant an order of possession, and if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.

Based on the evidence before me, the testimony of the Landlord and his agent, and on a balance of probabilities, I make the following findings:

I find that the Landlord served the Tenants with the 10 Day Notice in person on March 21, 2020. I find that the rent owing in the 10 Day Notice was for rent that was owing under the tenancy agreement prior to March 18, 2020 when Ministerial Order M089 came into effect. I find that the rent of \$1,500.00 is not considered to be “affected rent”.

I find that the Tenant received the 10 Day Notice on March 21, 2020 and I find that the Tenant did not pay all the rent owing under the tenancy agreement within five days of receiving the 10 Day Notice. The Tenants payment of \$1,500.00 on March 27, 2020 was one day late.

I find that the Tenants did not apply to dispute the 10 Day Notice and are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice. I find that the Tenants did not have a legal right under the Act or under the emergency orders to withhold payment of the March 2020 rent.

I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective two days after service on 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.

Money Owed or Compensation for Damage or Loss

I find that the Tenants failed to pay all the rent owing under the tenancy agreement for the months of April; May; June; July; and August 2020.

I find that the Tenants owes the Landlord the amount of \$14,500 for unpaid rent.

Security Deposit

I authorize the Landlord to keep the security deposit of \$1,200.00 towards the award for unpaid rent.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenants to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I find that the Landlord has established an award of \$14,600.00 for unpaid rent and the cost of the filing fee. After setting off the security deposit of \$1,200.000 towards the award of \$14,600.00 I grant the Landlord a monetary order in the amount of \$13,400.00.

Conclusion

The Tenants failed to pay the rent due under the tenancy agreement and did not pay the rent within 5 days of receiving the 10 Day Notice and did not file to dispute the Notice. The Tenants are presumed under the law to have accepted that the tenancy ended on the effective date of the 10 Day Notice.

The Landlord is granted an order of possession effective two (2) days after service on the Tenants.

The Tenants failed to pay all the rent owing under the tenancy agreement for April; May; June; July; and August 2020. The Landlord is authorized to keep the security deposit and is granted a monetary order in the amount of \$13,400.00.

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: September 17, 2020

Residential Tenancy Branch