



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, OPR-DR-PP, FFL

Introduction

On September 18, 2020, the Landlord made an Application for Dispute Resolution seeking an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent pursuant to Section 46 of the *Residential Tenancy Act* (the “*Act*”), seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Landlord attended the hearing, and C.C. attended the hearing as an agent for the Landlord. Tenant N.A. attended the hearing as well. All parties in attendance provided a solemn affirmation.

C.C. advised that a Notice of Hearing and evidence package was served to Tenant A.G. by registered mail on September 24, 2020 at the rental unit address. However, he stated that he took over possession of the rental unit on September 8, 2020 after the Tenants gave up vacant possession of the rental unit. P.Y. advised that he returned to the rental unit every few days and observed that the registered mail Notice of Hearing package was in the mailbox, along with some other mail for the Tenants. He texted A.G. on October 19, 2020 informing him of this, and A.G. replied that he would pick up the mail. He testified that this mail was picked up sometime between October 20 to 23, 2020; however, he is not sure who picked up this mail.

C.C. advised that a Notice of Hearing and evidence package was served to N.A. by email on October 14, 2020, pursuant to the Substituted Service Decision dated October 14, 2020. N.A. confirmed that she received this package.

When reviewing the totality of the evidence before me, I am satisfied from the solemnly affirmed testimony that A.G. received the Landlord’s Notice of Hearing and evidence package when the mail was picked up from the rental unit. Furthermore, as N.A. confirmed that she received the Notice of Hearing and evidence package, I am satisfied

that she was served this as well. As such, both Tenants have been listed as the Respondents on the Style of Cause on this Decision. Moreover, as I am satisfied that the Landlord's evidence was served in accordance with the *Act*, I have accepted this evidence and will consider it when rendering this Decision.

N.A. advised that she did not serve her evidence to the Landlord. As this evidence was not served pursuant to Rule 3.15 of the Rules of Procedure, I have excluded this evidence and will not consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit towards this debt?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on December 1, 2019 as a fixed term tenancy for one year, ending November 30, 2020. However, the tenancy ended when the Tenants gave up vacant possession of the rental unit. C.C. advised that the Landlord took over possession of the rental unit on September 8, 2020 as the Tenants abandoned the rental unit. N.A. advised that she sent C.C. an email on August 2, 2020 stating that they would be giving up vacant possession of the rental unit on September 1, 2020; however, she did not have any proof of this. C.C. testified that the first time he was advised that the Tenants would be vacating the rental unit was via an email he received on August 26, 2020, and he referenced this email that was submitted as documentary evidence. As the Tenants had vacated the rental unit, the Landlord's request for an Order of Possession does not need to be considered.

Rent was established at \$2,250.00 per month and was due on the first day of each month. A security deposit of \$1,125.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

N.A. stated that she never provided a forwarding address in writing.

C.C. advised that the Landlord is seeking compensation in the amount of **\$11,500.00** for rental loss as the Tenants had not paid rent since April 2020 and then ended the fixed term tenancy early. The amount of compensation that the Landlord is seeking for rent is from April 2020 to September 2020, less \$2,000.00 that was received through a government subsidy. He stated that he posted a repayment plan on the Tenants' door on August 24, 2020 and emailed the Tenants of this. On August 26, 2020, he received an email from N.A. where she stated that she would not be able to pay the rent or the payments, and that she would be leaving by the end of the month. He stated that this was the first time that he was aware that the Tenants would be vacating the rental unit.

The Landlord advised that he did not take any steps to re-rent the rental unit immediately. He eventually re-rented the unit in December 2020, but he is not claiming for compensation for October or November 2020 rent.

The Tenant acknowledged that she received C.C.'s email and replied on August 26, 2020 that they would be moving out by September 1, 2020. She confirmed that they have not paid rent from April 2020 to the time they gave up vacant possession of the rental unit. She also confirmed that the Landlord received \$2,000.00 as a subsidy for the rent. As well, she stated that she did not accept the terms of the payment plan.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Furthermore, Policy Guideline # 5 outlines a Landlord's duty to minimize their loss in this situation and that the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. In claims for loss of rental income in circumstances where the Tenants end the tenancy contrary to the provisions of the Legislation, the Landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit.

Regarding the Landlord's claim for compensation for rental loss, when reviewing the totality of the evidence before me, there is no dispute that the parties entered into a fixed term tenancy agreement for a year, starting on December 1, 2019, yet the tenancy effectively ended because the Tenants gave up vacant possession of the rental unit. Sections 44 and 45 of the *Act* set out how tenancies end and also specifies that the Tenants must give written notice to end a tenancy. As well, this notice cannot be effective earlier than the date specified in the tenancy agreement as the end of the tenancy. Section 52 of the *Act* sets out the form and content of a notice to end a tenancy.

Based on the undisputed evidence before me, the Tenants informed the Landlord that they would be ending their tenancy by email on August 26, 2020. I do not find that the Tenants' form of ending the tenancy or the date with which they ended it was done in accordance with the *Act*. Therefore, I find that the Tenants vacated the rental unit contrary to Sections 45 and 52 of the *Act*.

Moreover, I find that the evidence indicates that as a result of the Tenants' actions, the Landlord could have suffered a rental loss. As the Landlord had been given minimal notification that the Tenants would be giving up vacant possession, and as this was done at the end of the month, I am satisfied that the Landlord was put in a position that it would have been difficult for him to re-rent the unit for September 1, 2020.

Given that the Landlord was provided with less than a week's notice that the Tenants would be vacating the rental unit, I find that the Landlord was put in a position that it would have been very difficult to rent the unit for September 1, 2020. As such, I am satisfied that the Tenants are responsible for the rental loss that the Landlord suffered from April 2020 to the end of September 2020. Consequently, I grant the Landlord a Monetary Order in the amount of **\$11,500.00**.

As the Landlord was successful in these claims, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of

Section 72 of the *Act*, I allow the Landlord to retain the security deposit in partial satisfaction of the amount awarded.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenants to the Landlord

April 2020 rental loss, less subsidy	\$1,750.00
May 2020 rental loss, less subsidy	\$1,750.00
June 2020 rental loss, less subsidy	\$1,750.00
July 2020 rental loss, less subsidy	\$1,750.00
August 2020 rental loss	\$2,250.00
September 2020 rental loss	\$2,250.00
Recovery of filing fee	\$100.00
Security deposit	-\$1,125.00
TOTAL MONETARY AWARD	\$10,475.00

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$10,475.00** in the above terms, and the Tenants must be served with **this Order** as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: December 8, 2020

Residential Tenancy Branch