



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNRL-S, OPL, MNDCL-S, FFL**

Introduction

The words tenant and landlord in this decision have the same meaning as in the *Act*, and the singular of these words includes the plural.

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

- A monetary order for rent and/or utilities and authorization to retain a security deposit pursuant to sections 38 and 67;
- An Order of Possession for Landlord's Use of Property pursuant to sections 49 and 55;
- A monetary order for damages or compensation and authorization to retain a security deposit pursuant to sections 38 and 67; and
- Authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open throughout the hearing to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord DJ attended the hearing ("landlord") and was assisted with translation halfway through the hearing by his daughter, BJ. The landlord testified he served the tenant with the Application for Dispute Resolution by registered mail on October 9, 2020 at the tenant's residential address. The tracking number for the mailing is recorded on the cover page of this decision. The tenant is deemed served with the Application for Dispute Resolution five days after being sent by registered mail, on October 14, 2020 in accordance with sections 89 and 90 of the *Act*.

Issue(s) to be Decided

Should the landlord's Two Month's Notice to End Tenancy for Landlord's Use be upheld or cancelled?

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to a monetary order for damages to the rental unit?

Can the landlord recover the filing fee?

Background and Evidence

The landlord gave the following testimony. The rental unit is owned by the 4 landlords listed on the Application for Dispute Resolution. The tenancy began approximately 10 years ago with this tenant, however there was no written tenancy agreement. Rent was set at \$600.00 per month payable on the first day of each month. A security deposit of \$250.00 was collected by the landlord which the landlord continues to hold.

The landlord testified that commencing April 1, 2020, the tenant stopped paying his rent. The landlord has not received any rent since March of 2020. The landlord seeks arrears in rent for the months of April through December 2020.

On August 6, 2020, at 6:42 p.m., the landlord served the tenant with a Two Month's Notice to End Tenancy for Landlord's Use by posting it to the tenant's door. The landlord testified he photographed the notice on the tenant's door, however the photo was not provided as evidence for these proceedings. A copy of the first and second page of the notice was supplied as evidence by the landlord. The landlord stated he only served the tenant with pages one and two of the notice. When I asked the landlord why he didn't serve the third and fourth pages of the notice, the landlord testified that he didn't print those pages and therefore he did not serve them. The landlord was unwavering in his testimony that he only served the first and second pages of the 4-page notice.

The landlord testified that subsequent to serving the Two Month's Notice to End Tenancy for Landlord's Use, he served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The landlord stated he has not yet filed an Application for Dispute Resolution seeking an order of possession based on the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

Analysis

The *Covid-19 (Residential Tenancy Act and Manufactured Home Park Tenancy Act) (No. 2) Regulations* made on August 14, 2020 requires landlords and tenants to enter

into repayment plans for unpaid affected rent (rent due during the period of March 18 to August 17, 2020).

The landlord seeks a monetary order for rent that was due during the affected rent period, spanning between March 18 and August 17, 2020. The landlord didn't provide any evidence that he served the tenant with the repayment plan. Since the landlord has not entered into the repayment plan as required by the regulation above, the landlord is not in a position to seek a monetary order for the unpaid affected rent. This portion of the landlord's application is dismissed with leave to reapply if the tenant defaults on the repayment plan.

In his application, the landlord seeks compensation for damages to the rental unit that have not yet been determined because the tenant has not allowed the landlord to access it. As such, I find this portion of the landlord's application to be premature and I dismiss it with leave to reapply after the tenancy ends in accordance with the *Act*.

The landlord's final application is for an order of possession based on the Two Month's Notice to End Tenancy for Landlord's Use served on August 6th. Notices to End Tenancy for Landlord's Use are issued under section 49 of the *Act*. Section 49(7) states a notice under this section must comply with section 52 [*form and content of notice to end tenancy*]. Section 52(e) states in order to be effective, a notice to end tenancy must be in writing and must, when given by a landlord, be in the approved form.

The landlord testified that he only served the first two pages of the 4-page document. While the first two pages of the notice provide the tenant with important information that must be completed by the landlord, the third and fourth pages also provide the tenant with equally important information regarding the tenant's rights and the landlord's obligations. While I accept the landlord's submission that he simply neglected to print and serve the third and fourth pages of the notice, I find that by not supplying the tenant with notice of his rights deprives the tenant of the ability to fully understand them. For this reason, I find that the landlord's notice does not comply with section 52 of the *Act* [form and content] and I cannot uphold it. The Two Month's Notice to End Tenancy for Landlord's Use dated August 6, 2020 is cancelled and of no further force or effect.

As the landlord's application was not successful, the landlord is not entitled to recover the \$100.00 filing fee for the cost of this application.

Conclusion

The landlord's application for an order of possession based on the Two Month's Notice to End Tenancy for Landlord's Use is dismissed without leave to reapply.

The application for a monetary order for unpaid rent is dismissed with leave to reapply after the landlord provides the tenant with a repayment plan in accordance with C19 Tenancy Regulation (no.2).

The landlord's application for compensation for damages to the rental unit is dismissed with leave to reapply.

The filing fee will not be recovered.

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 10, 2020

Residential Tenancy Branch