



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, OPM, FFL

Introduction

This hearing was convened as a result of the Landlords' Application for Dispute Resolution, made on October 5, 2020 (the "Application"). The Landlords applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession based on a Mutual Agreement to End Tenancy;
- a monetary order for unpaid rent;
- an order to retain the Tenant's security deposit; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 11:00 am on December 14, 2020 as a teleconference hearing. The Landlords appeared at the appointed date and time of the hearing. No one appeared for the Tenants. The conference call line remained open and was monitored for 10 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Landlords and I were the only persons who had called into this teleconference.

The Landlords testified the Application was served to the Tenants in person on October 8, 2020. The Landlords stated that they also served their documentary evidence package to the Tenants in person November 29, 2020. Based on the oral submissions of the Landlords, and in accordance with sections 89 and 90 of the *Act*, I find that the Tenants are deemed to have been served with the Application and documentary evidence on the same dates of service as indicated above. The Tenants did not submit documentary evidence in response to the Application.

Preliminary Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important issue to determine is whether or not the tenancy is ending based on a mutual agreement to end tenancy. The Landlords' request for a monetary order for unpaid rent, as well as an order to retain the Tenants' security deposit are dismissed with leave to reapply.

The Landlords were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Are the Landlords entitled to an order of possession based on a Mutual Agreement to End Tenancy dated July 1, 2020 (the "Mutual Agreement"), pursuant to Section 55 of the *Act*?
2. Are the Landlords entitled to an order granting the recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The Landlords testified to the following; the tenancy began on July 1, 2019. The Tenants are required to pay rent in the amount of \$950.00 which is due to the Landlords on the first day of each month. The Tenants paid a security deposit in the amount of \$400.00 which is currently being held by the Landlords. The Tenants continue to occupy the rental unit.

The Landlords testified that the parties came together on July 1, 2020 and mutually agreed to end the tenancy effective on October 1, 2020. The Landlords stated that the parties both signed the Mutual Agreement to End Tenancy dated July 1, 2020 mutually agreeing to ending the tenancy on October 1, 2020. The Landlords provided a copy of

the signed Mutual Agreement in support. The Landlords stated that the Tenants have not vacated the rental unit on the effective date of the Mutual Agreement and have not paid any rent to the Landlords since August 2020. As such, the Landlords are seeking an order of possession based on the Mutual Agreement, as well as the return of the filing fee.

Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

According to Section 55 (2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

- (a) a notice to end the tenancy has been given by the tenant;
 - (b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;
 - (c) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;
 - (c.1) the tenancy agreement is a sublease agreement;
 - (d) the landlord and tenant have agreed in writing that the tenancy is ended.**
- (3) The director may grant an order of possession before or after the date when a tenant is required to vacate a rental unit, and the order takes effect on the date specified in the order.
- (4) In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 5 *[Resolving Disputes]*,
- (a) grant an order of possession, and
 - (b) if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.

In this case, I find that both parties came together on July 1, 2020 and signed a Mutual Agreement to End Tenancy Effective October 1, 2020. I find that the Mutual Agreement

to End Tenancy was signed by both parties and clearly indicates that the parties are agreeing to end the tenancy on the effective date, October 1, 2020.

I find that the Mutual Agreement complies with the requirements for form and content and I find that the Landlords are entitled to an order of possession. As the Landlords stated that the Tenants have not been paid rent since August 2020, I find that the Landlords are entitled to an Order of Possession effective **two (2) days** after service on the Tenants, pursuant to section 55 of the Act. 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.

As the Landlords were successful with their Application, I find that they are entitled to recovering the filing fee paid to make the Application. Pursuant to section 67 and 72 of the Act, I find the Landlords are entitled to a monetary award in the amount of **\$100.00** which may be deducted from the Tenants' security deposit currently being held by the Landlords.

Conclusion

The Tenants have breached the Act by not complying with the Mutual Agreement. The Landlords are granted an order of possession effective **two (2) days** after service on the Tenants. The order should be served to the Tenants as soon as possible and may be filed in the Supreme Court and enforced as an order of that Court.

The Landlords are entitled to the return of the filing fee and are permitted to deduct **\$100.00** from the Tenants' security deposit.

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 14, 2020

Residential Tenancy Branch