



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPM, MNRL-S, MNDCL-S, FFL

Introduction

This hearing was convened by way of conference call. The Landlord filed an Application for Dispute Resolution on October 07, 2020 (the “Application”). The Landlord applied as follows:

- For an Order of Possession based on a mutual agreement to end the tenancy;
- To recover unpaid rent;
- For compensation for monetary loss or other money owed;
- To keep the security deposit; and
- For reimbursement for the filing fee.

The Landlord appeared at the hearing with the Co-landlord as well as E.C. and S.M. to assist. The Tenant did not appear at the hearing which lasted 20 minutes. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

E.C. asked to amend the Application to add unpaid rent for November and December. Pursuant to rule 4.2 of the Rules of Procedure (the “Rules”) I allowed this.

S.M. withdrew the request for compensation for strata fines.

The Landlord submitted evidence prior to the hearing. The Tenant did not. I addressed service of the hearing package and Landlord’s evidence.

S.M. testified that he served the hearing package and evidence on the Tenant in person October 12, 2020 at 8:30 p.m.

Based on the undisputed testimony of S.M., I am satisfied the Tenant was served with the hearing package and evidence in accordance with sections 88(a) and 89(1)(a) of the *Residential Tenancy Act* (the “Act”). I am also satisfied the Landlord complied with rule 3.1 of the Rules in relation to the timing of service.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all documentary evidence and oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession based on a mutual agreement?
2. Is the Landlord entitled to recover unpaid rent?
3. Is the Landlord entitled to keep the security deposit?
4. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord submitted a written tenancy agreement. It is between the Landlord and Tenant in relation to the rental unit. The tenancy started November 01, 2018 and was for a fixed term ending October 31, 2019. It then became a month-to-month tenancy. Rent is \$1,920.00 per month. E.C. testified that rent is due on the first day of each month. The Tenant paid a security deposit of \$960.00. The agreement is signed by the Landlord and Tenant.

The Landlord submitted a Mutual Agreement to End a Tenancy form (the “Mutual Agreement”). It states that the Tenant will vacate the rental unit at 11:59 p.m. on August 15, 2020. It is signed by the Landlord and Tenant.

The Landlord confirmed the Tenant signed the Mutual Agreement.

The Co-landlord testified that she witnessed the Tenant sign the Mutual Agreement.

E.C. testified that the Tenant has not paid rent for half of August and all of September, October, November and December. E.C. confirmed \$8,640.00 in rent is currently outstanding.

S.M. testified that the Tenant did not have authority under the *Act* to withhold rent for August to December.

S.M. agreed to an Order of Possession effective at the end of December given the Landlord is seeking unpaid rent for December.

Analysis

Section 44(1)(c) of the *Act* states that a tenancy ends if “the landlord and tenant agree in writing to end the tenancy”.

Pursuant to section 55(2)(d) of the *Act*, a landlord can apply for an order of possession of a rental unit if “the landlord and tenant have agreed in writing that the tenancy is ended”.

I am satisfied based on the Mutual Agreement, testimony of the Landlord and testimony of the Co-landlord that the Landlord and Tenant signed the Mutual Agreement ending the tenancy at 11:59 p.m. on August 15, 2020. The Tenant was bound by this agreement and was required to vacate the rental unit.

Pursuant to section 44(1)(c) of the *Act*, the tenancy ended August 15, 2020.

I am satisfied the Tenant has not vacated the rental unit and find the Landlord is entitled to an Order of Possession pursuant to section 55(2)(d) of the *Act*.

Section 26(1) of the *Act* states:

26 (1) 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 57 of the *Act* states:

(3) A landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

Based on the tenancy agreement and testimony of E.C., I am satisfied the Tenant is required to pay \$1,920.00 in rent per month by the first day of each month.

Based on the testimony of E.C., I am satisfied the Tenant failed to pay half of August rent and all of rent for September, October, November and December. I am satisfied \$8,640.00 in rent is outstanding.

Based on the testimony of S.M., I am satisfied the Tenant did not have authority under the *Act* to withhold rent for August to December.

Given the above, I am satisfied the Landlord is entitled to recover \$8,640.00 in unpaid rent.

Given the Landlord was successful in the Application, I award the Landlord reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Landlord is entitled to compensation in the amount of \$8,740.00. Pursuant to section 72(2)(b) of the *Act*, the Landlord can keep the \$960.00 security deposit. The Landlord is issued a Monetary Order for the remaining \$7,780.00 pursuant to section 67 of the *Act*.

The Landlord is issued an Order of Possession effective at 1:00 p.m. on December 31, 2020 pursuant to section 55(3) of the *Act*.

Conclusion

The Landlord is issued an Order of Possession effective at 1:00 p.m. on December 31, 2020. This Order must be served on the Tenant. If the Tenant does not comply with the Order, it may be filed in the Supreme Court and enforced as an order of that Court.

The Landlord is entitled to compensation in the amount of \$8,740.00. The Landlord can keep the \$960.00 security deposit. The Landlord is issued a Monetary Order for the remaining \$7,780.00. This Order must be served on the Tenant and, if the Tenant does

not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: December 17, 2020

Residential Tenancy Branch