



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNRL-S, MNDL-S, FFL

Introduction and Preliminary Matters

This hearing dealt with cross-applications filed by the parties. On October 9, 2020, the Tenants made an Application for Dispute Resolution seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”).

On October 21, 2020, the Landlords made an Application for Dispute Resolution seeking an Order of Possession based on the 10 Day Notice to End Tenancy for Unpaid Rent pursuant to Section 46 of the *Act*, seeking a Monetary Order for compensation for the unpaid rent and damages pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both Tenants attended the hearing. Landlord V.H. attended the hearing as well, with J.H. attending as an agent for the Landlords. All parties in attendance provided a solemn affirmation.

Tenant R.R. advised that a Notice of Hearing package was served to the Landlord by regular mail on or around October 15, 2020. As well, he was uncertain if their evidence was included in this package. J.H. advised that the Landlords never received this Notice of Hearing package. Based on this undisputed testimony, as the Tenants did not serve this package in a manner required by Section 89 of the *Act*, and as the Landlords did not receive this package, I am not satisfied that the Landlords were served with the Notice of Hearing package. As such, I dismiss the Tenants’ Application without leave to reapply.

In addition, as the Landlords were not served with this package, any evidence that the Tenants submitted to the Residential Tenancy Branch for consideration will be excluded and not considered when rendering this Decision.

J.H. advised that each Tenant was served a Notice of Hearing package by registered mail on October 29, 2020 (the registered mail tracking numbers are noted on the first page of this Decision). The tracking histories indicated that a notice card was left on October 30, 2020 and that a final notice card was left on November 4, 2020. She also stated that a copy of these packages was attached to the Tenants' door on October 29, 2020.

R.R. advised that they did not receive these packages as they gave up vacant possession of the rental unit on November 21, 2020. Tenant J.R. advised that they did not see these packages on the door of the rental unit. Furthermore, he stated that the locks were changed to the mailbox "at some point". He then stated that he discovered that the locks were changed on November 25, 2020. When he was asked how often he would check the mail, he replied that he would "usually frequently check, every week or more" and that the locks were not changed in early November 2020.

Based on these submissions, as J.R. acknowledged that he first discovered that the locks to the mailbox were changed on November 25, 2020, that he checked the mailboxes frequently before this time, and that the locks to this mailbox had not been changed in early November 2020, I find it dubious that the Tenants did not have access to their mail when the registered mail notice cards had been left. Consequently, I am doubtful that the Tenants did not receive these notifications of registered mail. As such, I am satisfied that the Tenants were sufficiently served the Notice of Hearing packages and were deemed to have received them five days after they were mailed, pursuant to Section 90 of the *Act*.

J.H. advised that the Landlords did not serve their evidence to the Tenants. As such, any evidence that they submitted to the Residential Tenancy Branch for consideration will be excluded and not considered when rendering this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that that complies with the *Act*.

Issue(s) to be Decided

- Are the Tenants entitled to have the Landlords' Notice cancelled?
- If the Tenants are unsuccessful in cancelling the Notice, are the Landlords entitled to an Order of Possession?
- Are the Landlords entitled to a Monetary Order for compensation?
- Are the Landlords 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 October 1, 2018 as a fixed term tenancy of four years, ending on September 30, 2022. However, the tenancy ended when the Tenants gave up vacant possession of the rental unit on or around November 21, 2020. Rent was established at an amount of \$1,800.00 per month and was due on the first day of each month. A security deposit of \$900.00 was also paid.

J.H. advised that the Notice was served to the Tenants by hand on October 5, 2020. However, J.R. stated that he found this Notice on their door on or around October 5, 2020, but he was not sure of the exact date that this was discovered. While R.R. made submissions about the conflicting testimony of when or how the Notice was served, the undisputed evidence is that the Notice was disputed by the Tenants on October 9, 2020. As such, there is no doubt that the Tenants received this Notice and that it was received on or prior to October 9, 2020.

The Notice indicated that \$1,800.00 was owing for rent that was due on March 1, 2020. The effective end date of the tenancy was noted as October 15, 2020. J.H. submitted that the Tenants have not paid rent from March to November 2020. As a result, despite the Landlords indicating that they were seeking compensation in the amount of \$25,000.00 on their Application, they were actually seeking a Monetary Order in the amount of **\$16,200.00** for the unpaid rent for this time period.

The Landlords were also seeking compensation in the amount of **\$5,000.00** for damage to the rental unit on their Application. However, this claim for damages to the rental unit has been dismissed with leave to reapply.

R.R. advised that they vacated the rental unit as the Landlords texted them stating that they would be moving into the rental unit at some point. As a result, the Tenants obliged the Landlords and moved out; however, they gave no notice to do so. He stated that March 2020 rent had been paid and they have evidence of an electronic transfer of this payment. He stated that they asked the Landlord for a payment plan for the rental arrears, but one was never offered.

J.R. confirmed that March 2020 rent was paid and that he has proof as he has always paid rent by electronic transfer. He “assumed” that this was paid on March 3, 2020 but he was not sure. He stated that the Landlords did not bring up this issue of non-payment of March 2020 rent until the Notice was served. He submitted that the Landlords never offered a payment plan despite them asking for one “multiple times”. However, he could provide no details on when or where he made these requests to the Landlords for a payment plan other than it was “every time the Landlords would come by”. He confirmed that they have not paid any rent from April 2020 to November 2020.

J.H. acknowledged that the Landlords would receive rent via electronic transfer; however, she contends that they never received payment of March 2020 rent. She stated that the Landlords asked the Tenants for March 2020 rent by text message, that the Tenants never asked for a payment plan, and that the Landlords never offered a payment plan.

Analysis

Upon consideration of the evidence 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.

Section 26 of the *Act* states that rent must be paid by the Tenants when due according to the tenancy agreement, whether or not the Landlords comply with the tenancy agreement or the *Act*, unless the Tenants have a right to deduct all or a portion of the rent.

Should the Tenants not pay the rent when it is due, Section 46 of the *Act* allows the Landlords to serve a 10 Day Notice to End Tenancy for Unpaid Rent. Once this Notice is received, the Tenants would have five days to pay the rent in full or to dispute the Notice. If the Tenants do not do either, the Tenants are conclusively presumed to have

accepted that the tenancy ends on the effective date of the Notice, and the Tenants must vacate the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlords must be signed and dated by the Landlords, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

I have reviewed the Landlords' 10 Day Notice to End Tenancy for Unpaid Rent to ensure that the Landlords have complied with the requirements as to the form and content of Section 52 of the *Act*. I am satisfied that the Notice meets all of the requirements of Section 52.

The undisputed evidence before me is that the Tenants received the Notice on or around October 5, 2020. According to Section 46(4) of the *Act*, the Tenants have 5 days to pay the overdue rent or to dispute this Notice. Section 46(5) of the *Act* states that *"If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), 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."*

As the Tenants were deemed to have received the Notice on October 10, 2020, they must have paid the rent in full or disputed the Notice by October 15, 2020, at the latest. Given the conflicting testimony, as there is insufficient evidence from either party to establish if rent for March 2020 was paid or not, it is unclear whether or not rent for this month was ever paid.

While the Tenants did dispute the Notice, they did not serve the Notice of Hearing package in accordance with the *Act*. As such, their Application was dismissed without leave to reapply. Furthermore, as the Tenants gave up vacant possession of the rental unit on or around November 21, 2020, it is unnecessary to grant an Order of Possession.

With respect to the issue of the unpaid rent, there is conflicting testimony over whether March 2020 rent was ever paid or not, and there was insufficient evidence from either side to support this one way or another. As a result, I have dismissed this claim for March 2020 rent with leave to reapply. However, as the consistent and undisputed evidence is that the Tenants have not paid rent from April 2020 to November 2020, I grant the Landlords a monetary award in the amount of **\$14,400.00** to satisfy this claim.

The Landlords' Application for damages to the rental unit has also been dismissed with leave to reapply.

As the Landlords were successful in this Application, I find that the Landlords are entitled to recover the filing fee. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlords to retain the security deposit in partial satisfaction of this debt outstanding.

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

Calculation of Monetary Award Payable by the Tenants to the Landlords

| Item | Amount |
|-----------------------------------|--------------------|
| Rental arrears for April 2020 | \$1,800.00 |
| Rental arrears for May 2020 | \$1,800.00 |
| Rental arrears for June 2020 | \$1,800.00 |
| Rental arrears for July 2020 | \$1,800.00 |
| Rental arrears for August 2020 | \$1,800.00 |
| Rental arrears for September 2020 | \$1,800.00 |
| Rental arrears for October 2020 | \$1,800.00 |
| Rental arrears for November 2020 | \$1,800.00 |
| Filing Fee | \$100.00 |
| Security deposit | -\$900.00 |
| Total Monetary Award | \$13,600.00 |

Conclusion

Based on the above, the Landlords are provided with a Monetary Order in the amount of **\$13,600.00** 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.

The Landlords claims for March 2020 rent and damages to the rental unit are dismissed with leave to reapply.

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 23, 2020

Residential Tenancy Branch