



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL, FFL

Introduction

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

- an Order of Possession for unpaid utilities and rent, pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent, pursuant to sections 26 and 67; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:40 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlords attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. 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 landlords and I were the only ones who had called into this teleconference.

Landlord S.H. testified that he personally served the tenant with this application for dispute resolution on November 5, 2020. Landlord A.M. testified that she witnessed the tenant let landlord S.H. into the subject rental property on November 5, 2020 and landlord S.M. was holding this application for dispute resolution. Landlord A.M. testified that she witnessed landlord S.H. leave the subject rental property on November 5, 2020 without this application for dispute resolution. I accept the above undisputed testimony and find that the tenant was served in accordance with section 89 of the *Act*.

Preliminary Issue- Amendment

Section 64(3)(c) of the *Act* states that subject to the rules of procedure established under section 9 (3) [director's powers and duties], the director may amend an application for dispute resolution or permit an application for dispute resolution to be amended.

Section 4.2 of the Residential Tenancy Branch Rules of Procedure (the “Rules”) states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

Since filing for dispute resolution, the landlord testified that the amount of rent owed by the tenant has increased to include unpaid rent from October 2020 to January 2021. The landlords testified to the following outstanding rent:

Month	Outstanding rent
October 2020	\$1,200.00
November 2020	\$1,500.00
December 2020	\$1,500.00
January 2021	\$1,500.00

I find that in this case the fact that the landlords are seeking compensation for all outstanding rent, not just the amount outstanding on the date the landlords filed the application, should have been reasonably anticipated by the tenant. Therefore, pursuant to section 4.2 of the Rules and section 64 of the *Act*, I amend the landlord’s application to include a monetary claim for all outstanding rent in the amount of \$5,700.00.

Issues to be Decided

1. Are the landlords entitled to an Order of Possession for unpaid rent, pursuant to sections 46 and 55 of the *Act*?
2. Are the landlords entitled to a Monetary Order for unpaid utilities and rent, pursuant to sections 26 and 67 of the *Act*?

3. Are the landlords entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both landlords, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the landlords' claims and my findings are set out below.

The landlords provided the following undisputed testimony. This tenancy began on October 1, 2020 and is currently ongoing. Monthly rent in the amount of \$1,500.00 is payable on the first day of each month. A security deposit was not paid by the tenant to the landlords. A tenancy agreement was not entered into evidence.

Landlord S.M. testified that he posted a 10 Day Notice to End Tenancy for Unpaid Utilities and Rent on November 3, 2020 (the "10 Day Notice"). The 10 Day Notice was entered into evidence and states that the tenant failed to pay rent in the amount of \$1,200.00 that was due on October 1, 2020 and failed to pay the security deposit in the amount of \$600.00 that was due on October 1, 2020. The 10 Day Notice is not dated and does not contain a date that the tenant is expected to vacate the subject rental property. Landlord S.M. entered into evidence a photograph of the 10 Day Notice taped to the door of the subject rental property. Landlord A.M. testified that she witnessed landlord S.M. leave their home with the 10 Day Notice on November 3, 2020 and return without it.

This application for dispute resolution was made on October 22, 2020 and the 10 Day Notice was uploaded into evidence on October 22, 2020.

The landlords testified that the tenant has not paid any rent since the 10 Day Notice was served and has not paid the security deposit.

Analysis

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. Pursuant to section 26(1) of the *Act*, I find that the tenant was obligated to pay the monthly rent in

the amount of \$1,500.00 on the first day of each month. Based on the undisputed testimony of the landlords I find that the tenant did not pay rent in accordance with section 26(1) of the *Act* and owes the landlords \$5,700.00 in unpaid rent from October 2020 to January 2021.

I accept the landlords' undisputed testimony regarding service of the 10 Day Notice. I find that the 10 Day Notice was served in accordance with section 88 of the *Act*.

Section 52 of the *Act* states that in order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
- (e) when given by a landlord, be in the approved form.

I find that the 10 Day Notice does not comply with section 52(a) and 52(c) of the *Act* and is therefore not effective. I also note the discrepancy between the application date and date the 10 Day Notice was uploaded (October 22, 2020) and the date the landlords testified the 10 Day Notice was served on the tenant (November 3, 2020). Pursuant to the above, I dismiss the landlord's application for an Order of Possession with leave to reapply.

Section 17 of the *Act* states:

A landlord may require, in accordance with this Act and the regulations, a tenant to pay a security deposit as a condition of entering into a tenancy agreement or as a term of a tenancy agreement.

I accept the landlords' undisputed testimony that the tenant was required to pay a security deposit in the amount of \$600.00 at the start of this tenancy and failed to do so. I order the tenant to pay the landlords the \$600.00 security deposit.

As the landlords were successful in the monetary portion of their application, I find that they are entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the landlords in the amount of \$6,400.00.

The landlords are provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant 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' application for an Order of Possession is 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: January 12, 2021

Residential Tenancy Branch