



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL, FFL, CNC, LRE, FFT

Introduction

In the first application, by date, the landlord seeks an order of possession pursuant to an unchallenged ten day Notice to End Tenancy delivered October 16, 2020 and for a monetary award for one month's rent.

In the second application, the landlord seeks an order of possession pursuant to a ten day Notice to End Tenancy received November 17, 2020 and for a monetary award for two months' rent.

In the third application, the tenants apply to cancel the ten day Notice received November 17 and for an order restricting the landlord's right of entry.

The parties also seek recovery of the filing fee for their respective application(s).

All three parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

During the hearing the landlord indicated the tenants had not paid rent for the months of December and January, dates after the landlord's applications were made. He requested that his claim be amended to add a request for recovery of those rents. The tenant RB admitted no rent had been paid but opposed the amendment. In my view to refuse the amendment in these circumstances would only cause delay and the unnecessary incursion of an additional fee. I allow the landlord's request and amend his second claim to include a request for a monetary award for the December and January rents.

Issue(s) to be Decided

Have either of the ten day Notices resulted in the ending of this tenancy? What rent do the tenants owe? Have the landlord's actions of the circumstances of the tenants justify a restriction on the landlord's right of entry to the rental unit?

Background and Evidence

The rental unit is a three bedroom townhouse. There is a written tenancy agreement. The tenancy started in June 2020. The monthly rent is \$2400.00, due on the first of each month, in advance. The landlord holds a \$1200.00 security deposit and no pet damage deposit.

At the start of the tenancy the tenants gave the landlord postdated cheques for rent through to May 2021. The landlord testifies that none of the cheques he has attempted to negotiate have been honoured by the tenants' financial institution.

The landlord issued a ten day Notice to End Tenancy for nonpayment of September's rent and attempted to proceed on the Notice through the Direct Request process. His direct request application was refused and the Notice was declared invalid by the Direct Request Adjudicator because the portion of the mandatory ten day Notice form requiring a landlord to insert the date the tenancy would end, read "according to law."

It would appear that very late in September the tenants paid the landlords for the September rent by e-transfer. The landlord did not admit it or deny it, but the tenant RB indicated he was looking at the email acceptance notification from the landlord for the two transfers. Of note as well, in his later applications the landlord does not appear to claim recovery of September rent.

On November 10 the landlord issued another ten day Notice claiming the tenants had failed to pay \$4800.00 due on November 1. The tenants admit receiving the Notice by registered mail November 17. The landlord's materials are not of a quality that permits one to discern the date stamps or registered mail tracking numbers in the photographs of the mail and receipts.

The tenants made their application by paying the required fee to the Residential Tenancy Branch (RTB) on November 20, though the actual Notice of Dispute

Resolution Proceeding hearing letter for service on the landlord was not issued by the RTB until December 1.

They paid the landlord \$2400.00 on November 24 and nothing since then.

Analysis

October Notice

In accordance with the decision rendered in the landlord's Direct Request application and review (file number shown on cover page of this decision) I am bound to determine that his ten day Notice for unpaid October rent is fatally flawed by the failure to indicate an end of tenancy date.

November Notice

On the evidence before me I consider it most likely that the tenants did pay the September rent by two e-transfers in late September.

I have reviewed the November ten day Notice and determine that it was in the proper form and that at the time it was issued and delivered the tenants owed the landlord \$4800.00 in rent (for October and November), as claimed in the Notice. The tenants did not pay that amount within five days after receipt of the Notice but applied to cancel it. As the Notice was in the proper form and for the proper amount owing, I can see no basis for cancelling it.

I determine that the November ten day Notice was a valid Notice and, by operation of s. 38 of the *Residential Tenancy Act* (the "RTA"), caused this tenancy to end ten days after receipt, that is; on November 27, 2020.

As a result the landlord will have an order of possession. As the tenants have not paid rent or occupation rent, the order of possession will be immediate.

I consider that the \$2400.00 paid by the tenants in late November to have been applied to the oldest outstanding rent; the October rent. The landlord is therefore owed November rent of \$2400.00 plus occupation rent for December and January; a total of \$7200.00. I award the landlord that amount.

Tenants' Request to Limit Landlord Entry

As this tenancy has ended, there is no purpose in considering the tenants' request for an order limiting the landlord's right of entry to the rental unit. I would caution all the parties to inform themselves about Covid-19 protocols because the parties are expected to conduct a move-out condition inspection and prepare a written report, as directed by s. 35 of the *RTA*.

Conclusion

The landlord's application for an order of possession is allowed. He will have an order of possession against the tenants requiring them to return possession of the rental unit to him within 48 hours after either of the tenants are served with the order or 72 hours after a copy of the order is posted to a door to the premises, whichever occurs first.

I grant the landlord a monetary award of \$7200.00 plus recovery of the \$100.00 filing fee for each of his applications. He will have a monetary order against the tenants in the amount of \$7400.00. He is free to apply the security deposit money against the outstanding balance.

The tenants' application is dismissed.

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 19, 2021

Residential Tenancy Branch