



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR-MT, FFT, OPR-DR, OPRM-DR

Introduction

This hearing dealt with cross-applications filed by the parties. On November 6, 2020, the Tenant 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”), seeking more time to cancel the Notice pursuant to Section 66 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On November 16, 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* and seeking a Monetary Order for compensation for the unpaid rent pursuant to Section 67 of the *Act*.

The Tenant did not attend the hearing at any point during the 32-minute teleconference. Landlord A.A. attended the hearing with M.M. attending as an agent for the Landlord. All parties in attendance provided a solemn affirmation.

As the Tenant did not attend the hearing, I dismiss her Application without leave to reapply.

The Landlord advised that the Tenant was served the Notice of Hearing package and some evidence by registered mail on November 23, 2020 (the registered mail tracking number is noted on the first page of this Decision). The tracking history indicated that this package was delivered on November 26, 2020. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was sufficiently served the Notice of Hearing package and evidence. As such, I have

accepted the evidence that the Landlord served in this package, and this evidence will be considered when rendering this Decision.

The Landlord advised that he served the Tenant additional evidence by hand on January 6, 2021; however, he did not check to see if the Tenant could view the digital evidence that was included as part of this package, pursuant to Rule 3.10.5 of the Rules of Procedure. As such, I have excluded the digital evidence and will not consider it when rendering this Decision. However, the remainder of this additional evidence is accepted and will be considered when rendering this Decision.

The Landlord advised that the Tenant gave up vacant possession of the rental unit on December 31, 2020 pursuant to an Order of Possession (the relevant file number is noted on the first page of this Decision). As such, the matter with respect to granting an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent does not need to be considered.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to recover the filing fee?
- Is the Landlord entitled to a Monetary Order for compensation?

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.

The Landlord advised that the tenancy started on June 1, 2019 and the tenancy ended when the Tenant gave up vacant possession of the rental unit on December 31, 2020. Rent was established at an amount of \$2,700.00 per month and was due on the first day of each month. A security deposit of \$1,350.00 was also paid. A copy of the written tenancy agreement was submitted as documentary evidence.

M.M. advised that multiple 10 Day Notices to End Tenancy for Unpaid Rent were served; however, the Notice that was relevant to this hearing was served to the Tenant by posting it to the Tenant's door on October 28, 2020. The Notice indicated that \$4,050.00 was owing for rent and that it was due on October 10, 2020. The effective end date of the tenancy was noted as November 8, 2020. He submitted that the Tenant only paid half of rent for June 2020 and paid portions of rent from that point onwards. The balance of rent owing before October 2020 was \$1,350.00. The Tenant did not pay October 2020 rent either. Furthermore, the Tenant has not paid rent for November or December 2020. As such, the Landlords are seeking a Monetary Order in the amount as follows:

- September 2020 rent: \$1,350.00
- October 2020 rent: \$2,700.00
- November 2020 rent: \$2,700.00
- December 2020 rent: \$2,700.00
- Total rental arrears: **\$9,450.00**

M.M. also advised that the Landlords were granted an Order of Possession from a previous Dispute Resolution Proceeding pertaining to a Two Month Notice to End Tenancy for Landlord's Use of Property, and this was the reason the tenancy came to an end.

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 Tenant when due according to the tenancy agreement, whether or not the Landlords comply with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

Should the Tenant 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 Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant 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.

The undisputed evidence before me is that the Tenant was deemed to have received the Notice on October 31, 2020. According to Section 46(4) of the *Act*, the Tenant has 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 Tenant received the Notice on October 31, 2020, she must have paid the rent in full or disputed the Notice by November 5, 2020 at the latest. The undisputed evidence is that the Tenant did not pay the outstanding rent in full by this date.

While the Tenant did dispute the Notice, she did so late, and as she did not attend the hearing, her Application was dismissed without leave to reapply. Furthermore, as the Tenant gave up vacant possession of the rental unit on December 31, 2020, it is unnecessary to grant the Landlords an Order of Possession.

With respect to the issue of the unpaid rent, there is no dispute that the Tenant owed \$1350.00 for September 2020 rent and that she did not pay any rent for October, November, or December 2020. As such, I am satisfied that the Landlords are owed the rental arrears for these months. However, the undisputed evidence is that the Tenant was served a Two Month Notice to End Tenancy for Landlord's Use of Property that was determined to be a valid notice pursuant to a prior Dispute Resolution proceeding. As the Tenant is entitled to one month's compensation in accordance with Section 51 of the *Act*, I find that the Landlords are not entitled to compensation for December 2020 rent.

Consequently, I grant the Landlords a monetary award in the amount of **\$6,750.00** to satisfy this claim.

As the Tenant was not successful in this Application, I find that the Tenant is not 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 38, 67, and 72 of the *Act*, I grant the Landlords a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenant to the Landlords

Item	Amount
Rental arrears for September 2020	\$1,350.00
Rental arrears for October 2020	\$2,700.00
Rental arrears for November 2020	\$2,700.00
Security deposit	-\$1,350.00
Total Monetary Award	\$5,400.00

Conclusion

The Tenant's Application is dismissed without leave to reapply.

Based on the above, the Landlords are provided with a Monetary Order in the amount of **\$5,400.00** 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.

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 28, 2021

Residential Tenancy Branch