



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL-S, FFL

This hearing was convened in response to an application made November 12, 2020 by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. An Order of Possession - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Tenant did not attend the hearing. The Landlord appeared and gave the following testimony:

The Landlord had served the Tenant with a 10-day notice to end tenancy for unpaid rent (the “Notice”) by posting the Notice on the door on October 23, 2020. Before the end of October 2020, the Landlord attended and entered the unit. It appeared like the Tenant had moved out of the unit but had left a table and some chairs. The Landlord served its application for dispute resolution and the notice of hearing by posting the documents on the door of the unit on November 15, 2020. The Landlord has possession of the unit.

As the Landlord has possession of the unit, I dismiss this claim.

Section 89(1) of the Act provides that an application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;

- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

Given the Landlord's evidence of the state of the unit at the end of October 2020, I find that the Tenant was no longer residing at the unit when the Landlord both made and served its application for dispute resolution. As a result, I also find that the Landlord did not serve the Tenant with its application for dispute resolution as required under the Act. I therefore dismiss the claim for unpaid rent and retention of the security deposit with leave to reapply. Leave to reapply is not an extension of any applicable limitation period. As the Landlord's claims have not been successful, I dismiss the claim for recovery of the filing fee.

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: February 04, 2021

Residential Tenancy Branch