



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, MNRL-S, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- an order of possession under a Two Month Notice to End Tenancy for Landlord's use of property (the Notice), pursuant to sections 49 and 55;
- a monetary order for unpaid rent, pursuant to sections 26 and 67;
- an authorization to retain the tenant's security and pet damage deposits (the deposits), under section 38; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 10:18 A.M. to enable the tenant to call into this teleconference hearing scheduled for 9:30 A.M. The tenant did not attend the hearing. The landlord and her advocate NS (the landlord), co-owner of the rental unit, 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 landlord, her advocate and I were the only ones who had called into this teleconference.

I accept the landlord's testimony that the tenant was served with the application and evidence, except the document named 'How Much tenant Owes', by registered mail on November 20, 2020, in accordance with section 89(2)(b) of the Act (the tracking number is recorded on the cover of this decision). As the document named 'How Much tenant Owes' was not served, per Rule of Procedure 3.17 I am excluding this document from consideration.

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail the tenant is deemed to have received the

application and evidence except the document named 'How Much Tenant Owes' on November 25, 2020, in accordance with section 90 (a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

Issues to be Decided

Is the landlord entitled to:

1. an order of possession based on the Notice?
2. a monetary order for unpaid rent?
3. an authorization to retain the tenant's deposit?
4. an authorization to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending party; it is their obligation to present the evidence to substantiate their application.

The landlord stated the tenancy started on May 04, 2019. Rent is \$1,550.00 per month, due in two equal payments on the 15th and 30th day of the month. At the outset of the tenancy a security deposit of \$775.00 and a pet damage deposit of \$387.00 were collected and the landlord holds the deposits in trust.

The landlord affirmed the Notice was served by way of sliding it under the door on July 31, 2020. A witnessed proof of service (RTB form 34) was submitted into evidence. It states: "left papers slid under door. Tenant wouldn't answer door". The tenant verbally confirmed receipt of the Notice to the landlord later.

A copy of the Notice was provided. The Notice is dated July 31, 2020. It states the rental unit will be occupied by the landlord or the landlord's spouse. The effective date is September 02, 2020. The tenant continues to occupy the rental unit.

The landlord testified the tenant has not paid rent and is in arrears of \$19,016.85 for unpaid rent since the beginning of the tenancy. The landlord did not serve the repayment plan. This application was submitted on November 10, 2020.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Order of Possession

Based on the undisputed landlord's testimony and the proof of service form, I find the landlord served the Notice by sliding it under the rental unit door.

Section 88 of the Act states:

All documents, other than those referred to in section 89 [special rules for certain documents], that are required or permitted under this Act to be given to or served on a person must be given or served 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 ordinary mail or 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 ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;**
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents];
- (j) by any other means of service prescribed in the regulations.

(emphasis added)

Residential Tenancy Branch Policy Guideline 12 provides explanations about service of documents:

The Legislation provides a number of service methods which may be used where a landlord or tenant is serving documents which are not considered to be special documents (as identified in “Special requirements for service of documents” in sections 3 and 4 above). These documents may include, but are not limited to notices of rent increase, notices to enter, notices terminating or restricting services, copies of tenancy agreements, condition inspection reports, requests for repairs or notice of a tenant’s forwarding address in writing.

Failure to serve documents in a way recognized by the Legislation may result in the director determining that the party was not properly served with the document.

[...]

The methods permitted for service of documents generally are:

[...]

- by attaching a copy of the document to a door or other conspicuous place at the address where the person to be served resides at the time of service

If this method is used, the person attaching the document should make sure that the door or conspicuous place belongs to the person's residence, and that the document will be readily seen by the person entering or leaving the residence

A conspicuous place is one that is clearly visible and likely to attract notice or attention. Placing a copy of the document under the door is not recognized by the Legislation.

(emphasis added)

I find the landlord failed to serve the Notice in accordance with section 88 of the Act and can not obtain an order of possession based on the Notice.

As such, I dismiss the landlord's application for an order of possession without leave to reapply.

Unpaid rent

The Covid19 Residential Tenancy Regulation states:

“Affected rent means” **rent that becomes due to be paid by a tenant in accordance with a tenancy agreement during the “specified period” between March 18, 2020 and August 17, 2020**, and

[...]

“repayment plan” means a repayment plan within the meaning of Division 1 of Part 2 or Division 1 of Part 3 of this regulation, as applicable;

“specified period” means the period that starts March 18, 2020 and ends on the earlier of the following:

[...]

Section 3:

(2) The landlord must give the tenant a repayment plan if

(a) the tenant has overdue affected rent, and

(b) subject to subsection (3), the landlord and tenant did not enter into a prior agreement.

The landlord is claiming for unpaid rent including affected rent, the tenancy is ongoing and the landlord did not serve a repayment plan.

Residential Tenancy Branch Policy Guideline 52 provides explanation about applications for monetary order for unpaid affected rent:

**F. APPLICATIONS FOR MONETARY ORDERS FOR UNPAID AFFECTED RENT
MADE ON OR AFTER JULY 31, 2020**

If no valid repayment plan has been given to a tenant, or a valid repayment plan has been given to a tenant or a landlord and tenant have a valid prior agreement in place and the tenant is in good standing because:

- the first payment has not come due, or
- the tenant is paying the installments as required,

then an arbitrator may dismiss the application with leave to reapply, until such time as the tenancy ends and/or the tenant has failed to pay, at least, one installment.

July 31, 2020 is when COVID-19 (Residential Tenancy and Manufactured Home Park Tenancy Act) Regulation came into effect. This regulation established the repayment plan scheme that has been continued under the C19 Tenancy Regulation. Applications for monetary orders for unpaid affected rent made after this time when a tenant is in good standing under the terms of the C19 Tenancy Regulation are generally considered to be an attempt to circumvent the C19 Tenancy Regulation. This can qualify as an abuse of the dispute resolution process.

(emphasis added)

As such, I dismiss the landlord's application for a monetary order for unpaid rent with leave to reapply.

Deposits and filing fee

As the landlord did not obtain a monetary order, the landlord must continue to hold the deposits and address them in accordance with section 38 of the Act.

As the landlord was not successful in her application, the landlord must bear the cost of her filing fee.

Conclusion

I dismiss the landlord's application for an order of possession and for an authorization to recover the filing fee for this application without leave to reapply.

I dismiss the landlord's application for a monetary order for unpaid rent 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: February 09, 2021

Residential Tenancy Branch