



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants: CNC, OLC, FFT

For the landlords: OPC, MNRL-S, FFL

Introduction

This hearing dealt with a cross application. The tenants' application pursuant to the Residential Tenancy Act (the Act) is for:

- cancellation of the One Month Notice to End Tenancy for Cause (the Notice), pursuant to section 47;
- an order for the landlord to comply with the Act, the Residential Tenancy Regulation (the Regulation) and/or tenancy agreement, under to section 62; and
- an authorization to recover the filing fee for this application, under section 72.

The landlords' application pursuant to the Act is for:

- an order of possession under the Notice, pursuant to sections 47 and 55;
- a monetary order for unpaid rent, pursuant to sections 26 and 67;
- an authorization to retain the tenants' security deposit (the deposit) in satisfaction of the monetary order requested, pursuant to section 72;
- an authorization to recover the filing fee for this application, under section 72.

Both parties attended the hearing. Tenant FK represents tenant QL. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing both parties confirmed they understand they must be civil and orderly at all times, only one person can speak at the same time, the hearing cannot be recorded and the parties can be muted or removed of the hearing.

Preliminary Issue – Service

Tenant FK affirmed she served her application and evidence (the materials) in person to both landlords on December 10, 2020.

Landlord AL confirmed receipt of both packages on December 12, 2020 including the materials. Landlord AK stated the documentary evidence mentioned a video file, but she did not receive a video file. As landlord AL was speaking tenant FK interrupted her twice. I warned tenant FK not to interrupt and explained she can be muted if she interrupts again, per Rule of Procedure 6.10.

Tenant FK testified she served the materials on December 11, 2020 and that the video file was only submitted to the Residential Tenancy Branch. At a later point the tenant said she also served the video to the landlords.

Landlord AK affirmed she served both tenants materials by registered mail on December 11, 2020. The tracking number for the package mailed to tenant QL is recorded on the cover page of this decision. Tenant FK confirmed receipt of both packages. At a later point tenant FK stated she only received one package.

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, tenant QL is deemed to have received the materials on December 16, 2020, in accordance with section 90 (a) of the Act.

Based on the both parties testimony and the tracking number for the package mailed to tenant QL, I find the landlords served their materials in accordance with section 89(2)(b) of the Act.

Tenant FK's testimony about service of the video was not convincing. First she affirmed she served the materials on December 10, 2020. Later she corrected her testimony to December 12, 2020. First she stated she served the video. Later she corrected her testimony to state the video was not served. Then she changed her testimony again to state the video was served. Based on the landlord's straightforward testimony, I find the tenants served their materials, except the video, in accordance with section 89(1)(a) of the Act. The video is not accepted into evidence.

As I was explaining my decision that the video is not accepted into evidence tenant FK became aggressive and stated: "I will sue you for not accepting my video into evidence. I am recording this proceeding and I will sue you".

In response I warned tenant FK and stated her abusive behaviour will not be accepted. I also ordered tenant FK to immediately stop recording this hearing and destroy the recording, per Rule of Procedure 6.11.

Tenant FK stated one more time she will sue me. In response I muted tenant FK, per Rule of Procedure 6.10.

Preliminary Issue – Vacant Rental Unit

Landlord AK stated the tenants left the rental unit on December 12, 2020 and the family of tenant QL removed all the tenants' belongings on December 19, 2020.

At this point I unmuted tenant FK and she confirmed she has not been occupying the rental unit since December 12, 2020.

The tenants' application for cancellation of the Notice and for an order for the landlords to comply with the Act and the landlords' application for an order of possession under the Notice are moot since the tenancy has ended and the tenants left the rental unit.

Section 62(4)(b) of the Act states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss the tenants' application entirely and the landlords' application for an order of possession.

As I was explaining that the tenants' application is moot tenant FK left the hearing. I continued the hearing pursuant to Rule of Procedure 7.3.

Issues to be Decided

Are the landlords entitled to:

1. a monetary order for unpaid rent?
1. an authorization to retain the tenants' deposit?
2. an authorization to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to all the accepted evidence provided by the attending parties, including documentary evidence and the testimony, not all details of the submission and arguments are reproduced here. I explained Rule of Procedure 7.4 to the attending parties; it is the landlords' obligation to present the evidence to substantiate their claims.

Landlord AL testified the periodic tenancy started on September 12, 2020, the tenants moved out on December 12, 2020 and the tenants' belongings were removed on December 19, 2020. Rent was \$1,000.00 per month, due on the first day of the month. At the outset of the tenancy a deposit of \$500.00 was collected and the landlords hold it in trust. The tenancy agreement was submitted into evidence.

Landlord AL stated she served the Notice by attaching it to the tenants' rental unit door on November 17, 2020. A copy of the Notice was submitted into evidence. The Notice effective date is December 17, 2020. The tenants applied for an order to cancel the Notice on November 26, 2020. Landlord AL affirmed the tenants did not return the keys and tenant's QL representative removed the tenants' belongings on December 19, 2020.

Landlord AL confirmed receipt of the tenants' forwarding address in writing on December 18, 2020. The landlords applied for dispute resolution on December 03, 2020.

Landlord AL testified the tenants did not pay rent for December 2020 and are in arrears of \$1,000.00.

Analysis

I accept the landlord's uncontested testimony that the tenancy agreement requires the tenants to pay monthly rent of \$1,000.00 on the first of the month and the tenants did not pay rent on December 01, 2020 and occupied the unit until December 19, 2020.

Section 47(4) of the Act states a tenant may dispute a one month notice to end tenancy by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

As the tenants applied for dispute resolution on November 26, 2020 they could continue the tenancy until a decision is rendered in the tenants' application. The tenants did not give notice to end periodic tenancy, under section 45 of the Act.

Section 26 of the Act requires that a tenant pay rent when it is due under the tenancy agreement. As such, they were required to pay rent on December 01, 2020 in full.

Based on the landlord's undisputed testimony and the tenancy agreement, I find the tenants are in arrears for the rent of December 2020 in the amount of \$1,000.00.

Section 38(1) of the Act requires the landlord to either return the tenants' security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

The landlord confirmed receipt of the tenant's forwarding address on December 18, 2020 and brought an application for dispute resolution on December 03, 2020, before the timeframe of section 38(1) of the Act.

Filing fee and summary

As the landlords were successful in their application, the landlords are entitled to recover the \$100.00 filing fee.

As the tenants' application was dismissed, the tenants must bear the cost of their filing fee.

As explained in section D.2 of Policy Guideline #17, the Residential Tenancy Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord and the monetary amount or cost awarded to a tenant may be deducted from any rent due to the landlord. Thus, I order the landlords to retain the tenant's deposit of \$500.00 in partial satisfaction of the monetary award granted.

In summary:

Unpaid rent December 2020	\$1,000.00
Filing fee	\$100.00
Minus security deposit	\$500.00 (subtract)
Total monetary award	\$600.00

Conclusion

Pursuant to sections 26, 38, 67 and 72 of the Act, I authorize the landlords to retain the \$500.00 deposit and grant the landlords a monetary order in the amount of \$600.00.

The landlords are provided with this order in the above terms and the tenants must be served with this order in accordance with the Act. Should the tenants 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: March 01, 2021

Residential Tenancy Branch