



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR - S, MNDC, FFL

Introduction

This participatory hearing was scheduled pursuant to an Interim Decision issued by an Adjudicator on March 29, 2021 in response to the landlord's application for an Order of Possession and Monetary Order for unpaid rent under the Direct Request procedure.

At the hearing, only the landlord and his nephew (referred to by initials JB) appeared. The landlord and JB were affirmed and ordered to refrain from recording the proceeding. Since there was no appearance on part of the tenant, I explored service of the hearing documents upon the tenant.

The landlord and JB testified that they delivered the Notice of Dispute Resolution Proceeding to the tenant on April 2, 2021, in person, at the rental unit. JB described how he and the landlord knocked on the door of the rental unit and the tenant opened the door and they handed him the documents. The landlord testified that on April 13, 2021 the tenant was still residing at the rental unit as he gave the landlord's wife \$700.00 and promised to satisfy the outstanding rent but he did not and he continues to occupy the rental unit.

Upon examining the landlord and JB, I was satisfied the tenant was duly served with notification of this proceeding and I continued to hear from the landlord without the tenant present.

The landlord requested the monetary claim be amended to include loss of rent for March 2021, April 2021 and May 2021 since the landlord's original claim was for unpaid rent to February 2021 and the tenant has continued to occupy the rental unit. The landlord also requested the Monetary Order take into account the \$700.00 payment received on April 13, 2021 and authorization to retain the tenant's security deposit and pet damage deposit.

Rule 4.6 of the Rules of Procedure provide:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

I find the request to amend the monetary claim to include loss of rent for the months after the 10 Day Notice was issued to reflect the tenant's continued occupation of the rental unit while awaiting this proceeding is reasonably foreseeable and I amend the monetary claim accordingly. I also amend the claim to reflect the tenant's payment on April 13, 2021 and the landlord's request to retain the deposits as doing so would be non-prejudicial to the tenant since it would reduce any Monetary Order I were to issue.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord entitled to a Monetary Order for unpaid and/or loss of rent, as amended?
3. Is the landlord authorized to retain the tenant's security deposit and pet damage deposit in partial satisfaction of unpaid rent?
4. Award of the filing fee.

Background and Evidence

Pursuant to a written tenancy agreement, the tenancy started on December 14, 2019 on a month to month basis. The tenant paid a security deposit of \$700.00 and a pet damage deposit of \$350.00. The tenant was required to pay rent of \$1400.00 on the first day of every month.

The landlord testified that between October 2020 and February 2021 the tenant had paid the landlord only \$1800.00 toward the \$7000.00 (\$1400.00 x 5 months) he should have. The landlord applied \$1400.00 toward the rent for October 2020 and the remaining \$400.00 toward rent for November 2020. On February 14, 2021 the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities ("10 Day Notice")

indicating \$5200.00 was outstanding as of February 1, 2021 and a stated effective date of February 28, 2021.

The landlord and JB posted the 10 Day Notice to the door of the rental unit on February 14, 2021. After posting the 10 Day Notice the tenant did not pay the outstanding rent except for \$700.00 paid to the landlord's wife on April 13, 2021. The tenant did not file to dispute the 10 Day Notice.

In taking the \$700.00 payment on April 13, 2021 the landlord applied it toward the rental arrears of \$5200.00. JB stated that on April 13, 2021 the tenant had also promised to satisfy the rental arrears on Saturday April 17, 2021 but when JB sent a text message to the tenant asking for the money the tenant responded that he did not have it. The landlord and JB stated the tenant continues to occupy the rent unit.

Documentary evidence provided for my review included a copy of: the tenancy agreement; the 10 Day Notice dated February 14, 2021; a signed witness statement as to service of the 10 Day Notice signed by JB; a photograph of a 10 Day Notice posted to the rental unit door; and, a Direct Request worksheet showing the calculation of the rental arrears.

Analysis

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations, or tenancy agreement, unless the tenant has a legal right to withhold rent.

Where a tenant does not pay rent the landlord is at liberty to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the 10 Day Notice or the tenant has five days to dispute the 10 Day Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the 10 Day Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the 10 Day Notice.

I accept the unopposed evidence before me that the tenant was required to pay rent of \$1400.00 on the first day of every month and the tenant has failed to do so for the months of November 2020 onwards. I was not provided any evidence to suggest the tenant had a lawful right to withhold rent payable.

I also accept the unopposed evidence of the landlord and JB that a 10 Day Notice was posted to the door of the rental unit on February 14, 2021. Upon review of the 10 Day Notice, I find it is in the approved form and is duly completed. In keeping with section 90 of the Act, the tenant is deemed to have received the 10 Day Notice three days after posting to the door, on February 17, 2021. Accordingly, I find the tenant had until February 22, 2021 to either pay the outstanding rent or file to dispute the 10 Day Notice. Since the tenant did neither, I find the tenancy ended on the stated effective date of February 28, 2021. Therefore, I find the landlord is entitled to regain possession of the rental unit and I provide the landlord with an Order of Possession effective two (2) days after service upon the tenant.

Based upon the unopposed evidence before me, I find the landlord entitled to recover from the tenant the unpaid rent of \$5200.00 less the \$700.00 payment received on April 13, 2021, leaving a balance outstanding of \$4500.00.

I further find the landlord entitled to recover loss of rent incurred for the months of March 2021 and April 2021 since the tenant did not vacate the rental unit when he was required, causing the landlord to suffer further loss of rent. Given the date of this hearing, I also award the landlord loss of rent for the first half of May 2021. Should the landlord suffer further loss of rent due to the tenant's actions, or lack thereof, the landlord is at liberty to seek such losses under a subsequent Application for Dispute Resolution.

I also award the landlord recovery of the \$100.00 filing fee paid for this application.

I authorize the landlord to retain the tenant's security deposit and pet damage deposit in partial satisfaction of the rent owed to the landlord.

In light of the above, the landlord is provided a Monetary Order to serve and enforce upon the tenant, calculated as follows:

Outstanding unpaid rent up to and including February 2021	\$4500.00
Loss of rent for March 2021 and April 2021	2800.00
Loss of rent for May 1 – 15, 2021	700.00
Filing fee	100.00
Less: security deposit and pet damage deposit	<u>(1050.00)</u>
Monetary Order	\$7050.00

Conclusion

The landlord is provided an Order of Possession effective two (2) days after service.

The landlord is authorized to retain the tenant's security deposit and pet damage deposit and is provided a Monetary Order for unpaid and/or loss of rent up to and including the first half of May 2021 in the amount of \$7050.00.

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: May 03, 2021

Residential Tenancy Branch