



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Neighbourhood Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNRL-S, OPR, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- A monetary order for rent and/or utilities and authorization to retain a security deposit pursuant to sections 38 and 67;
- An Order of Possession for unpaid Rent pursuant to sections 46 and 55; and
- Authorization to recover the filing fee for this application from the opposing party pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:40 a.m. to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. 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 and I were the only ones who had called into this teleconference.

The landlord attended the hearing, represented by KF ("landlord"). The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified that she served the tenant with the Notice of Dispute Resolution Proceedings package by registered mail on March 26, 2021 and the tracking number for the mailing is recorded on the cover page of this decision. I deem the tenant to be served with the Notice of Dispute Resolution Proceedings package on March 31, 2021, five days after it was mailed in accordance with sections 89 and 90 of the Act.

This hearing proceeded in the absence of the tenant.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent?

Can the landlord recover the filing fee?

Background and Evidence

The landlord testified that the rental unit is located in a subsidized housing building where tenants pay a portion of the market rate for housing, based on their income. This percentage is reviewed in April of each year. In March of 2020, the tenant's portion of rent was \$375.00 but increased to \$474.00 in April 2020. The remainder of the rent for the units was paid through government social services.

The landlord testified that the tenant was not paying his portion of the rent since before March 2020. The landlord provided a ledger showing that prior to March 1, 2020, the tenant was already in arrears of \$1,420.00. By October 30, 2020, the tenant's arrears had grown to \$2,693.00.

The landlord testified that on October 15, 2020, she served the tenant with a repayment plan for unpaid rent that accrued between March 18 and August 17, 2020, "affected rent". The landlord testified that the arrears for this period were \$1,323.00 and the tenant was given a repayment plan to repay \$132.30 as well as the tenant's regular \$474.00 portion of the rent for the next 10 months. The landlord testified that the tenant did not pay any of the arrears in accordance with the repayment plan.

On January 12, 2021, the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("notice") by posting a copy of it to the tenant's door. The landlord provided a witnessed, signed proof of service document in her evidence. A copy of the notice was also provided as evidence. The effective date for the notice is January 31, 2021 and it states the tenant failed to pay the amount of \$2,644.00 that was due on January 1, 2021.

During the hearing, the landlord was unable to confirm how \$2,644.00 was arrived at for the calculation of arrears, since \$4,115.00 was owing as of January 1, 2021 according to the ledger. The landlord testified that since serving the tenant with the notice to end tenancy, the tenant has made some payments, but it is unclear whether they were for regular rent or against arrears. The ledger shows that the tenant made a payment of \$946.00 on January 14, 2021, two days after receiving the notice to end tenancy, for example. The landlord acknowledges receipts were issued, but the receipts did not

indicate “for use and occupancy”. The landlord testified however, that they did not give the tenant any indication that the tenancy was going to be reinstated by accepting rent.

The landlord submits that since serving the notice to end tenancy and filing for dispute resolution, the arrears in rent continue to grow. As of March 1, 2021, the tenant's portion of unpaid rent have risen to \$3,171.00. The government has continued to pay the subsidized portion of the tenant's rent throughout his tenancy. The landlord seeks to amend their Application for Dispute Resolution to include unpaid rent to March 1, 2021.

Analysis

Based on the evidence provided by the landlord and the landlord's testimony, I deem the tenant served with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on January 15, 2021, three days after January 12, 2021, the day the notice was posted to the tenant's door, pursuant to sections 88 and 90 of the Act.

Section 46 of the Act pertains to Landlord's notice for non-payment of rent.

- 4) Within 5 days after receiving a notice under this section, the tenant may
 - (a) pay the overdue rent, in which case the notice has no effect, or
 - (b) dispute the notice by making an application for dispute resolution.
- (5) 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
 - (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
 - (b) must vacate the rental unit to which the notice relates by that date.

While the evidence shows the tenant made a payment of \$946.00 within 5 days after receiving the notice, that amount was less than the \$2,644.00 arrears stated on the notice to end tenancy. In order for the notice to have no effect, the tenant must pay the overdue rent in full.

The tenant did not file for dispute resolution to dispute the notice to end tenancy within 5 days of receiving it. I find that since the arrears were not paid in full and the tenant did not make an Application for Dispute Resolution, the tenant is conclusively presumed to have accepted the tenancy ended on the effective date stated on the notice. I find that the landlord did not reinstate the tenancy by accepting rent after serving the notice to end tenancy as the landlord provided undisputed evidence to me that the landlord gave no indication to the tenant that this was their intent. I find it reasonable for the landlord

to continue to derive income from the rental unit while it is occupied by the tenant who has been served with a notice to end tenancy. The effective date stated on the notice of January 31, 2021 has passed. The landlord is therefore entitled to an order of possession effective 2 days after service upon the tenant.

The landlord provided undisputed testimony corroborated by a ledger to show how the arrears in the tenant's portion of rent was arrived at. I accept that market rent for the unit is \$922.00 per month and that social services were paying \$448.00 of the rent, leaving the remaining portion of rent attributable to the tenant of \$474.00. I accept the landlord's undisputed evidence that prior to March 1, 2020, the tenant was already in arrears of \$1,420.00. The landlord has clearly shown to me that the tenant is in arrears of rent up to March 1, 2021 in the amount of \$3,171.00. In accordance with section 67 of the Act, I award the landlord a monetary award of \$3,171.00.

The landlord was successful in their application and the \$100.00 filing fee will be awarded.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**.

I issue a monetary order in the landlord's favour in the amount of **\$3,271.00**.

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: July 06, 2021

Residential Tenancy Branch