



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, MNRL, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords for an order of possession, for a monetary order for unpaid rent and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing. Both parties confirmed under affirmation that they were not making a prohibited recording of this hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Are the landlords entitled to an order of possession?

Are the landlords entitled to a monetary order for unpaid rent?

Background and Evidence

The parties agreed that the tenancy began on April 1, 2014. Current rent in the amount of \$1,313.00 was payable on the first of each month. The tenant paid a security deposit of \$587.50.

The parties agreed that the tenant was served with a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") issued on January 1, 2021, with an effective vacancy date of March 31, 2021.

At the outset of the hearing the tenant stated that they did not dispute the Notice as they wanted to move anyway. The tenant stated that they vacated the rental unit on July 19, 2021, and did not notify the landlords; however, they need to return the keys to the landlords.

The landlords testified that the tenant received compensation for receiving the Notice as they did not pay rent for March 2021. The landlord stated that the tenant did not vacate as required and has failed to pay any rent for April, May, June, and July 2021. The landlords seek to recover unpaid rent in the amount of \$5,252.00.

The landlords testified that due to the tenants action of overholding the premises for four months may have an impact on their rights to use the premises for the stated purpose for at least six months, and it would be unreasonable that the calculation of time of six month starts now.

The tenant testified that they did not pay the rent for those months.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In this case, the tenant was served with the Notice. The tenant did not dispute the Notice. I find the tenancy legally ended on March 31, 2021 and the tenant was overholding the premise. At today's hearing the evidence of the tenant was that they vacated the premise on July 19, 2021, without notifying the landlord. I find the tenants action is unreasonable.

As the landlords were unaware of the tenant vacating and has not been able to verify the tenant's testimony. I find it not prejudicial to the tenant to grant the landlord an **immediate order of possession**.

The parties at the hearing agreed to meet at the rental unit on todays date, July 20, 2021 at 4:00pm to conduct the move-out condition inspection report and for the keys to be returned.

I accept the evidence of both parties that the tenant did not pay rent for March 2021 and this was their compensation for receiving the Notice. However, the tenant had no authority under the Act not to pay subsequent rent. I find the tenant failed to pay rent for April, May, June, and July 2021. Therefore, I find the landlords are entitled to recover unpaid rent in the amount of **\$5,252.00**.

I find that the landlords have established a total monetary claim of **\$5,352.00** comprised of the above described amount and the \$100.00 fee paid for this application. I order that the landlords retain the security deposit of **\$587.50 in partial** satisfaction of the claim and I grant the landlords an order under section 67 of the Act for the balance due of **\$4,764.50**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

At the hearing the landlords stated that the delay of the tenant overholding the premise for four months may have an impact of their ability to use the premise for the stated purpose for an additional six months. If that is the case, the landlords are entitled to argue extenuating circumstance should the tenant make a future application on this issue. However, I can make no finding on that issue at today's hearing.

At the conclusion of the hearing, I canvassed with the tenant their forwarding address as the service information in the application would no longer apply. The tenant stated they would not provide their forwarding address; however, they would provide an email address for future service. I have noted the tenant's service address, email, on the covering page of this decision.

Therefore, I find it appropriate to grant the landlords' a substituted service order as follows.

- The landlords are entitled to serve the tenant a copy of the monetary order by email; and
- The landlords are entitled to serve the tenant by email any future application for dispute resolution. The landlords are to provide a copy of this substitutional order as evidence should they make a future application.

Conclusion

The landlords are granted an Immediate Order of Possession. The landlords are granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlords are granted a formal order for the balance due.

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 20, 2021

Residential Tenancy Branch