



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CK Progressive Developments
Ltd and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR
 OPR, MNRL-S, FFL

Introduction

This hearing was convened by way of conference call concerning applications made by the tenant and by the landlord. The tenant has applied for an order cancelling a notice to end the tenancy for unpaid rent or utilities. The landlord has applied for an Order of Possession and a monetary order for unpaid rent or utilities; an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

The landlord was represented at the hearing by an agent who gave affirmed testimony and called 1 witness who gave affirmed testimony. The landlord's agent was also accompanied by an assistant who did not testify or take part in the hearing. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenant joined the call.

The landlord's agent testified that the tenant was served with the landlord's application and notice of this hearing by registered mail on June 9, 2021, and has provided a Canada Post cash register receipt as well as a Registered Domestic Customer Receipt but the date is covered and not visible. The landlord was permitted to provide further proof of service after the hearing concluded. I now have a copy of a Registered Domestic Customer Receipt and a tracking document specifying that the item was delivered on June 10, 2021 and a signature of the tenant. I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

The landlord's agent also testified that the tenant has not served the landlord with the tenant's application. Since the tenant has not joined the hearing, I dismiss the tenant's application without leave to reapply.

Issue(s) to be Decided

The issues remaining to be decided are:

- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Should the landlord be permitted to keep the security deposit in partial satisfaction of the claim?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on April 1, 2019 and the tenant still resides in the rental unit. Rent in the amount of \$650.00 is payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$325.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a single room occupancy rental in an apartment building and a copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord's agent further testified that the tenant fell into arrears of rent, paying only \$200.00 for April, 2021, leaving \$450.00 outstanding for that month and paid no rent for May, 2021. On May 7, 2021 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the door of the rental unit. A copy has been provided for this hearing and it is dated May 7, 2021 and contains an effective date of vacancy of May 18, 2021 for unpaid rent in the amount of \$1,100.00 that was due on May 7, 2021. The landlord's agent testified that the due date should read May 1, 2021. However the tenant has not paid any rent since and is now in arrears further for June, July and August, 2021 and the total arrears now amount to \$3,050.00.

The tenant has not served the landlord with an application disputing the Notice and the landlord seeks an Order of Possession, a monetary order for the unpaid rent, recovery of the filing fee and an order permitting the landlord to keep the security deposit.

The landlord's witness is the owner of the apartment building and testified that the tenant has always been late with rent for almost 2 years. The landlord kept giving him chances but now the tenant has totally stopped paying rent, blaming COVID for the non-payment of rent.

The tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the door of the rental unit on May 7, 2021, and a Proof of Service document has been provided for this hearing which is signed by another agent of the landlord and the owner as witness.

Analysis

The *Residential Tenancy Act* states that a tenant must pay rent when it is due. In this case, the tenancy agreement specifies that rent in the amount of \$650.00 is payable on the 1st day of each month.

I have reviewed all of the evidentiary material provided by the landlord, and I am satisfied that the tenant failed to pay full rent for April, 2021, leaving \$450.00 outstanding and has not paid any rent since.

I am also satisfied that the tenant was served with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) on May 7, 2021 by posting it to the door of the rental unit, which is deemed to have been served 3 days later, or May 10, 2021. The tenant at that point had 5 days to dispute the notice or pay the rent in full. The tenant disputed the Notice on May 17, 2021, but did not attend the hearing and did not pay any rent. I also accept the undisputed testimony of the landlord's agent that the tenant has not served the landlord with the Tenant's Hearing Package, which is a requirement when disputing a notice to end the tenancy.

The *Act* also states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the notice given is in the approved form. I have reviewed the Notice and I find that it is in the approved form and contains information required by the *Act*. Therefore, I grant an Order of Possession in favour of the landlord. Since the effective date of vacancy contained in the Notice has passed, I grant the Order of Possession effective on 2 days notice to the tenant.

I am also satisfied that the tenant owes \$3,050.00 to the landlord for part of April, 2021 rent and full rent for the months of May through August, 2021 inclusive.

Since the landlord has been successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee.

I order the landlord to keep the \$325.00 security deposit in partial satisfaction of the claim, and I grant a monetary order in favour of the landlord for the difference of \$2,825.00.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed without leave to reapply.

I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenant.

I order the landlord to keep the \$325.00 security deposit and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,825.00.

This order is final and binding and may be enforced.

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: August 31, 2021

Residential Tenancy Branch