



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNRL, MNDCL, FFL, MNDL

Introduction

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

- a monetary order for unpaid rent or utilities, money owed or compensation for loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72 .

While the landlord attended the hearing by way of conference call, the tenants did not. I waited until 1:42 p.m. to enable the tenants to participate in this scheduled hearing for 1:30 p.m. The landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord and I were the only one who had called into this teleconference.

The landlord testified that the tenants were served with the landlord's application for dispute resolution hearing package and evidence on March 8, 2021 by way of registered mail. The landlord provided the tracking numbers in their evidentiary materials. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenants were deemed served with the landlord's application and evidence on March 13, 2021, five days after its registered mailing.

Preliminary Issue—Amendment to Landlord's Application for Compensation or Money Owed

The landlord testified that the tenants were removed by a bailiff from the rental unit on March 26, 201 after the landlord had obtained an Order of Possession through a direct request proceeding. The landlord filed an amendment on June 21, 2021 to recover additional losses since they had filed their application, including the cost of the bailiff and losses associated with the tenants' failure to leave the home in undamaged and reasonably clean condition.

Rule 4.6 states the following:

As soon as possible, copies of the Amendment to an Application for Dispute Resolution and supporting evidence must be produced and served upon each respondent by the applicant in a manner required by the applicable Act and these Rules of Procedure.

The applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Amendment to an Application for Dispute Resolution and supporting evidence as required by the Act and these Rules of Procedure.

In any event, a copy of the amended application and supporting evidence must be received by the by the respondent(s) not less than 14 days before the hearing.

I am not satisfied that the tenants have been served with the landlord's amendments. Given the importance, as a matter of natural justice and fairness, that the respondent must know the case against them, the landlord's amendments will not be considered as part of this application. The landlord is at liberty to file a new application. Liberty to reapply is not an extension of any applicable timelines. The hearing proceeded in order to deal with the landlord's original monetary claim.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for unpaid rent, utilities, or for money owed?

Is the landlord entitled to recover their filing fee for this application?

Background and Evidence

This month-to-month tenancy began on December 1, 2017, with monthly rent set at \$3,500.00, payable on the first of the month. The landlord had collected a security deposit in the amount of \$1,750.00, which the landlord still holds.

The landlord testified that they had served the tenants with a 2 Month Notice to End Tenancy for landlord's use on July 23, 2020 with an effective date of October 5, 2020. The landlord testified that the tenants requested an extension of time to move out, which the landlord had granted. The landlord testified that in accordance with the Act, the landlord had provided the tenants with one month's free rent, and waived the September 2020 rent in order to implement this monetary compensation. The landlord

testified that the tenants refused to move out, and the landlord had to serve the tenants with a 10 Day Notice for Unpaid Rent on February 9, 2021. As the tenants failed to pay the outstanding rent or move out, the landlord applied for an Order of Possession and Monetary Order for Unpaid rent through the direct request process, and the landlord was successful in obtaining both orders on March 11, 2021. The Monetary Order was granted for February 2021 rent and the filing fee. After the tenants failed to move out, the landlord had to obtain the services of a bailiff to remove the tenants on March 26, 2021.

The landlord filed an application for the return of the September 2020 rent as the tenants failed to move out pursuant to the 2 Month Notice. The landlord testified that they had accepted rent for the months of October 2020 through to January 2021 from the tenants, which the landlord provided a receipt for. The landlord testified that the tenants never provided a move-out date, and that the 2 Month Notice was no longer in effect after October 2021 as the tenancy continued for at least four months past the effective date until the tenants were removed for failing to pay the February 2021 rent.

The landlord also filed an application to recover unpaid utilities in the amount of \$1,762.84. The landlord submitted the bills for January 2018 to December 2020, and states that the tenants failed to pay the outstanding amount, which was then transferred to the landlord's property tax bill.

Lastly, the landlord testified that the tenant had failed to disclose that they had a dog, and never paid a pet damage deposit of the dog. The landlord applied to collect the pet damage deposit in the amount of \$1,750.00

Analysis

The landlord requested a monetary order for an unpaid pet damage deposit. As Section 20 of the *Act* only allows a security or pet damage deposit to be collected at the time both parties enter into a tenancy agreement, this portion of the landlord's application is dismissed without leave to reapply.

The landlord filed an application to recover unpaid utilities, which was not included in the monthly rent. I accept the undisputed testimony of the landlord that the tenants failed to pay \$1,762.84 in unpaid utilities, and I allow the landlord a monetary order in this amount.

The landlord also applied to recover the one month's compensation for the 2 Month Notice as the tenants failed to move out pursuant to that Notice. In consideration of the

landlord's application, I have considered whether the 2 Month Notice was still in effect or withdrawn, either explicitly or implied.

Residential Tenancy Policy Guideline #11 states the following about Waivers of Notices.

D. WAIVER OF NOTICE AND NEW OR CONTINUED TENANCY

Express waiver happens when a landlord and tenant explicitly agree to waive a right or claim. With express waiver, the intent of the parties is clear and unequivocal. For example, the landlord and tenant agree in writing that the notice is waived and the tenancy will be continued.

Implied waiver happens when a landlord and tenant agree to continue a tenancy, but without a clear and unequivocal expression of intent. Instead, the waiver is implied through the actions or behaviour of the landlord or tenant.

For example, if a landlord gives a notice to end tenancy, a landlord may accept rent from the tenant for the period up to the effective date of the notice to end tenancy without waiving the notice. However, if the landlord continues accepting rent for the period after the effective date but fails to issue rent receipts indicating the rent is for "use and occupancy only," it could be implied that the landlord and tenant intend for the tenancy to continue.

Intent may also be established by evidence as to:

- whether the landlord specifically informed the tenant that the money would be for use and occupancy only;
- whether the landlord has withdrawn their application for dispute resolution to enforce the notice to end tenancy or has cancelled the dispute resolution hearing; and
- the conduct of the parties.

Withdrawal of notice to end tenancy for landlord's use

If a landlord and tenant agree to withdraw a notice to end tenancy for landlord use under section 49, the tenant is not entitled to compensation for the notice. The tenant must repay any compensation that was paid as a result of the notice.

I note that the effective date of the 2 Month Notice was October 5, 2020, and after that date the tenants continued to reside in the rental unit. I find that the tenants continued to pay, and the landlord accepted monthly rent until February 2021 when the tenants failed to pay the rent for that month. I find that the tenancy had ended on March 26, 2021 only after the tenants were removed by a bailiff for failing to vacate the rental unit after the

landlord had obtained an Order of Possession following the issuance of the 10 Day Notice for Unpaid Rent.

In this case, I find that the continued payment and acceptance of rent for at least three months past the effective date of the 2 Month Notice supports the landlord's argument that the tenants had intended for the tenancy to continue. I find that the rent receipts did not indicate that the rent was for "use and occupancy only. Combined with the fact that the tenancy had only ended after the landlord had obtained an Order of Possession following the issuance of a 10 Day Notice for Unpaid rent, I find that 2 Month Notice dated July 22, 2020 was withdrawn through implied consent of both parties, and that this tenancy ended pursuant to the 10 Day Notice to End Tenancy for Unpaid Rent issued on February 6, 2021, and not pursuant to the 2 Month Notice for Landlord's Use.

However, if the landlord continues accepting rent for the period after the effective date but fails to issue rent receipts indicating the rent is for "use and occupancy only," it could be implied that the landlord and tenant intend for the tenancy to continue. I find that the 2 Month Notice was withdrawn through implied consent of both parties after October 5, 2020, and therefore the tenants are not entitled to compensation as set out in section 51(1) of the *Act*. Accordingly, I allow the landlord's application to recover the unpaid rent for September 2020 in the amount of \$3,500.00.

As the landlord was successful in their application, I find that they are entitled to recover the filing fee for this application.

The landlord continues to hold the tenants' security deposit of \$1,750.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' security deposit in partial satisfaction of the monetary claim.

Conclusion

I issue a \$3,612.84 Monetary Order in favour of the landlord under the following terms, which allows the landlord to recover unpaid rent and utilities, plus the filing fee.

Item	Amount
Unpaid Rent for September 2020	\$3,500.00
Unpaid Utilities	1,762.84
Filing Fee	100.00
Less Security Deposit Held	-1,750.00
Total Monetary Order	\$3,612.84

The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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.

I dismiss the remainder of the landlord's application without leave to reapply.

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 13, 2021

Residential Tenancy Branch