



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNRL-S, FFL, CNR, CNL-MT

### Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenants applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- more time to make an application to cancel the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 66;
- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49.

The landlord attended with his agent, S.S. via conference call and provided undisputed affirmed testimony.

The landlords were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

The landlord stated that the tenants were served with the notice of hearing package and the submitted documentary evidence via email on August 25, 2021. The landlord clarified that only 4 out of the 9 documentary evidence files submitted to the Residential Tenancy Branch as evidence was served to the tenants. The tenants did not submit any documentary evidence. I accept the undisputed affirmed evidence of the landlord and find that the tenants were served via email on August 25, 2021 and despite not attending the hearing are deemed served as per section 90 of the Act. I also find that on the 5 documentary evidence files referred to by the landlord as not being served to the tenant as being excluded from consideration in this hearing. The remaining 4 documentary evidence files are deemed served and accepted.

The hearing concluded after 65 minutes past the start of the scheduled hearing time. At that time the tenant's application was dismissed. The landlord confirmed that he received the tenants application for dispute and was ready to respond to it. On this basis, I find that the tenants' application is dismissed without leave to reapply.

#### 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 and recovery of the filing fee?

Is the landlord entitled to retain the security deposit?

#### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

The landlord seeks an order of possession for unpaid rent and an amended monetary claim of \$5,200.00 for July 2021 and September 2021 at \$2,600.00 per month. The landlord clarified that the tenants still occupy the rental unit as of the date of this hearing and have not paid any rent for October 2021.

The landlord stated that monthly rent was \$2,600.00 that was due on the 1st day of each month and that the tenants paid a \$1,300.00 security deposit.

The landlord provided undisputed affirmed evidence that the 10 Day Notice to End Tenancy for Unpaid Rent dated July 22, 2021 was served upon the tenants on July 23, 2021 by posting it to the rental unit door. The 10 Day Notice sets out an effective end of

tenancy date of July 31, 2021 and that the tenants failed to pay rent of \$2,600.00 that was due on July 1, 2021.

The landlord stated that since the 10 Day Notice was served the tenant paid rent late for August 2021 after August 6<sup>th</sup>. The landlord confirmed in his direct testimony that no notice was given to the tenants' for "Use and Occupancy Only" for accepting the late rent payment. The landlord stated that the tenants still owe unpaid rent of \$2,600.00 for July 2021; September 2021 and October 2021 totalling, \$7,800.00.

The landlord also stated that he received a signed and dated letter from the tenants acknowledging their unpaid rent for July and September 2021 and agreeing to vacate the rental unit, however as yet the tenants have not paid any rent and have not vacated the rental unit.

### Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

I accept the undisputed affirmed evidence of the landlord and find that the tenants were served with the 10 Day Notice dated July 22, 2021 by posting it to the rental unit door on July 23, 2021. I also accept the undisputed affirmed evidence that the landlord's claim that the tenants failed to pay rent for July 2021, September 2021 and October 2021 at \$2,600.00 per month for a total of \$7,800.00.

However, I note that the landlord provided undisputed affirmed evidence that a late rent payment was accepted of \$2,600.00 sometime after August 6, 2021. The landlord stated that this was received late at night via etransfer. I note however that the landlord confirmed that after receiving the late payment no notice was given to the tenants for "use and occupancy only" that the payment would be accepted but that the landlord still wished to proceed with ending the tenancy. On this basis, I find that the landlord's request for an order of possession is dismissed based upon the 10 Day Notice dated July 22, 2021.

I do find based upon the above noted undisputed affirmed evidence of the landlord that the tenants failed to pay rent for July 2021, September 2021 and October 2021 at \$2,600.00 for each month for a total of \$7,800.00. I also note the landlord's direct

testimony that he was in receipt of a signed and dated note from the tenants acknowledging the unpaid rent for July and September 2021.

The landlord is entitled to recovery of the \$100.00 filing fee. As the tenancy shall continue, I decline to make any order for against the security deposit.

### Conclusion

The landlord is granted a monetary order for \$7,900.00.

This order must be served upon the tenants. Should the tenants fail to comply with this order, the order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: October 05, 2021

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Residential Tenancy Branch