



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Eden Crest Limited Partnership and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL, OPL-4M, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an Order of Possession, further to having served a Four Month Notice to End Tenancy for Landlord's Use dated March 19, 2021 ("Four Month Notice"); for a monetary order for unpaid rent of \$2,500.00; and to recover the \$100.00 cost of their Application filing fee.

The Tenant and an agent for the Landlord, C.S. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. One witness for the Tenant was also present and available to provide affirmed testimony; however, he was not called upon in the hearing.

During the hearing, the Tenant and the Agent were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Tenant acknowledged receipt of the Landlord's Application, Notice of Hearing documents, and their evidentiary submissions, which the Agent said were sent by registered mail on August 27, 2021. The Tenant said she delivered her evidence to the Landlord's office, "...about seven days ago". She said she gave it to a man who answered the door, and she asked him to give it to [the Agent]. However, the Agent said that she was never advised by her office that there were any documents for her in this matter. The Agent said she is in close contact with her office and that she gets a lot of mail from them, but that she received nothing from the Tenant for this hearing. The

Tenant said she did not have any proof of having served the Landlord this way. I note that the Tenant's evidence was submitted to the RTB seven days prior to the hearing.

Rule 3.16 states that at the hearing, the respondent must be prepared to demonstrate to the satisfaction of the arbitrator that each applicant was served with all their evidence as required by the Act and these Rules of Procedure. The Tenant did not provide any proof of service in this regard. Accordingly, and pursuant to Rule 3.17, I find that the Tenant did not serve her evidence to the Landlord pursuant to the criteria set out in the Rules. As such, I find that the Tenant's documentary submissions are not evidence before me for consideration in making my Decision.

Preliminary and Procedural Matters

The Landlord provided the Parties' email addresses in the Application and they confirmed these in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing, and that anyone who was recording it was required to stop immediately.

While the Landlord initially claimed one month's rent or \$2,500.00 when applying for dispute resolution, the Agent said that the rent owing has grown, as the Tenant failed to vacate the rental unit on July 31, 2021, as required by the Four Month Notice. The Agent requested that the Landlord's Application for a monetary order be increased to \$10,000.00 to reflect the changing amount of this debt.

Pursuant to Rule 4.2 and section 64(3)(c) of the Act, I amend the Application for dispute resolution to correct the amount of the monetary order sought by the Landlord, reflecting the ongoing failure of the Tenant to pay the monthly rent owing. I find no prejudice to the Tenant, as she is aware of how much rent she has or has not paid; therefore, she could have anticipated that the Landlord would claim reimbursement for the full amount of rent owing. Accordingly, I find it reasonable to amend the amount of the monetary order sought by the Landlord from the Tenant from \$2,500.00 to \$10,000.00.

Issue(s) to be Decided

- Is the Landlord entitled to an order of possession?

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on July 7, 2017, with a monthly rent of \$2,500.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$1,250.00, and no pet damage deposit. The Agent said that the Landlord still holds the Tenant's security deposit. They also agreed that the Tenant vacated the premises, although they did not agree on the date on which this occurred. Accordingly, I find that the Landlord no longer requires an order of possession for the residential property.

The Agent advised that the owner purchased the residential property in May 2021, and that the previous owner had served the Tenant with the Four Month Notice to End the Tenancy for Landlord's Use – Demolition - dated March 19, 2021 ("Four Month Notice").

The Tenant acknowledged service of the Four Month Notice, and she confirmed that she had not disputed it. The Tenant said she had intended to vacate the rental unit on the effective vacancy date of July 31, 2021; however, she said she could not find somewhere else to live. The Tenant said that they moved out of the rental unit by the end of September 2021, as they had obtained a new rental unit for September 1, 2021.

The Agent asserted that the Tenants were still in the rental unit in November 2021. I asked the Agent how she knew this, and she said:

They had a lot of the vehicles on the property. One frame of a burned-out vehicle is still there. There must have been about six vehicles there at all times on the property.

The front door has two doors - like French doors - and one of the doors was ripped off and left on the lawn. The lawn had garbage spread all over it. They were there until November.

The Tenant that she signed a new lease starting on September 2021; however, she said she did not think it would be necessary to upload a copy. She said this was her first time in a hearing like this.

I asked the Agent to summarize the Landlord's claim for compensation from the Tenant,

and she said the Landlord seeks \$10,000.00 in unpaid rent for August through November 2021. The Agent said that the Tenants had July free of rent pursuant to the requirements of a Four Month Notice, as July was supposed to be the last month of the tenancy.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Pursuant to Rule 6.6, the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim – the Landlord in this case.

Section 26 of the Act states: “A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.” There is no evidence before me that the Tenant had a right to deduct any portion of the rent from the monthly rent due to the Landlord.

However, there is a discrepancy between the Parties as to when the Tenant vacated the rental unit. I find there is no disagreement that the Tenant resided in the rental unit in August and September 2021. However, the Tenant did not submit a copy of her new tenancy agreement, which would have provided some proof of when she moved.

I find that the Landlord’s evidence of having driven past the residential property in November and seeing the front door and garbage strewn on the lawn is more reflective of an abandoned property, than one inhabited by tenants. The Agent said there were multiple vehicles on the property when the Tenants lived there; however, she referred to a burned-out vehicle frame that was left on the property; she did not say there were multiple vehicles still parked there in November.

Based on the evidence before me overall, I find it more likely than not that the Tenant vacated the rental unit at the end of September 2021. Further, and pursuant to sections 26 and 67 of the Act, I award the Landlord with **\$5,000.00** from the Tenant for unpaid rent in August and September 2021. Given the Landlord’s success, I also award the Landlord with recovery of the **\$100.00** Application filing fee, pursuant to section 72 of the Act.

The Landlord is authorized to retain the Tenant's **\$1,250.00** security deposit in partial satisfaction of these awards. I grant the Landlord a Monetary Order of **\$3,850.00** for the remaining amount of the award owed by the Tenant to the Landlord, pursuant to section 67 of the Act.

Conclusion

The Landlord is successful in their Application for a monetary award for two months' unpaid rent. The Landlord met their burden of proof on a balance of probabilities that the Tenants overheld in the residential property for two months after an effective vacancy date of a Four Month Notice. The Landlord did not provide sufficient evidence to establish that the Tenant overheld the residential property for longer than that.

I grant the Landlord a Monetary Order under section 67 of the Act from the Tenant of **\$3,850.00**. This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: December 15, 2021

Residential Tenancy Branch