



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL, MNDL - S

Introduction

This participatory hearing was scheduled pursuant to an Interim Decision issued on November 19, 2021 by an Adjudicator reviewing the landlord's application for an Order of Possession and Monetary Order for unpaid rent made under the Direct Request procedure.

At the hearing, the landlord and his daughter appeared. There was no appearance on part of the tenant.

Since the tenant did not appear, I explored service of the hearing materials upon the tenant. The landlord submitted that the Notice of Dispute Resolution Proceeding and Interim Decision were sent to the tenant at the rental unit address on November 22, 2021, via registered mail. The landlord also confirmed that the tenant was still occupying the rental unit at the time of mailing as she was seen removing possessions on the weekend of December 11 and 12, 2021.

The landlord provided a registered mail receipt, including tracking number, as proof of service. I was satisfied the landlords met their obligation to serve the tenant in a manner that complies with section 89 of the Act.

Section 90 of the Act deems a person to be in receipt of documents five days after they are mailed, even if the person refuses to accept or pick up their mail. Pursuant to section 90 of the Act, I deemed the tenant to be in receipt of the hearing materials and I continued to hear from the landlord without the tenant present.

The landlord stated that on December 13, 2021 he was able to see some possessions remaining in the rental unit through a window; however, the landlord has not entered the unit to determine whether the tenant has abandoned the rental unit and personal

property. As such, the landlord continues to seek an Order of Possession in the event the tenant has not already vacated or abandoned the unit.

During the hearing, the landlord requested the application be amended to include loss of rent for November 2021 and December 2021 and authorization to retain the tenant's deposits in partial satisfaction of the losses. Rules 4.2 of the Rules of Procedure provide for amending an application at the hearing, as follows:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

I find the landlord's request to amend the claim to include loss of rent for November 2021 and December 2021 can be reasonably foreseeable having heard the tenant only recently removed her possessions from the rental unit and I permitted the amendment. I also permit the application to be amended to reflect the landlord's request for authorization to retain the tenant's deposits as such a request is non-prejudicial to the tenant since it would reduce any monetary claim I were to issue to the landlords.

Issue(s) to be Decided

1. Are the landlords entitled to an Order of Possession?
2. Are the landlords entitled to a Monetary Order for unpaid and/or loss of rent?
3. Are the landlords authorized to retain the tenant's security and pet damage deposits?
4. Award of the filing fee.

Background and Evidence

The tenancy started on October 1, 2021 and the tenant paid a security deposit of \$900.00 and a pet damage deposit of \$100.00. The tenant was required to pay rent of \$1800.00 on the first day of every month for a fixed term of one year.

The tenant only paid \$500.00 toward the rent that was due on October 1, 2021. On October 2, 2021 the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or

Utilities ("10 Day Notice") and served the tenant with all three pages of the 10 Day Notice, in person, on October 2, 2021. A picture of the female landlord handing an envelope to the tenant in the rental unit was submitted as evidence in addition to the landlord's testimony.

The tenant paid the balance of rent owing (\$1300.00) on October 11, 2021. The funds were accepted for use and occupancy for the remainder of October 2021 as seen in a receipt emailed to the tenant.

On November 1, 2021 the tenant was still occupying the rental unit and indicated she would need a few more days to move out, as seen in text messages sent by the tenant. The landlord testified that during subsequent phone calls with the tenant, the tenant informed the landlord she would not be vacating until an Order of Possession is issued.

The landlord testified that during the weekend of December 11 and 12, 2021 the tenant was seen removing possessions from the rental unit. On December 13, 2021 the landlord went to the property but did not enter the unit. The landlords could see a few possessions remaining in the rental unit through a window. The landlords intend to post a notice of entry and enter the unit so as to determine if the tenant has abandoned the unit. In the event the tenant has not already vacated or abandoned, the landlord seeks an Order of Possession.

The landlords seek to recover loss of rent for November 2021 and December 2021 since the tenant continued to hold possession of the rental unit and did not pay any rent to the landlord for these months.

Documentary evidence provided for my review included a copy of: the tenancy agreement, the 10 Day Notice, registered mail receipts; text messages exchanged with the tenant; and, an email showing acceptance of the rent for use and occupancy only for the month of October 2021.

Analysis

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations, or tenancy agreement, unless the tenant has a legal right to withhold rent.

Where a tenant does not pay rent the landlord is at liberty to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. When a tenant receives a 10 Day Notice

the tenant has five days to pay the outstanding rent to nullify the 10 Day Notice or the tenant has five days to dispute the 10 Day Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the 10 Day Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the 10 Day Notice.

I accept the unopposed evidence before me that the tenant was required to pay rent of \$1800.00 on the first day of every month and the tenant only paid \$500.00 toward the rent when it was due on October 1, 2021, leaving a balance owing of \$1300.00. I was not presented any evidence to suggest the tenant had a legal right to withhold rent otherwise payable.

I further accept the unopposed evidence before me that the tenant was personally served with all three pages of a 10 Day Notice on October 2, 2021 showing rent of \$1300.00 was outstanding. Accordingly, I find the tenant had until October 7, 2021 to either pay the outstanding rent or file to dispute the 10 Day Notice. The tenant paid the balance of rent owing on October 11, 2021 but that is after the five day time limit for doing so. The tenant did not file to dispute the 10 Day Notice. Therefore, I find the tenancy ended on October 12, 2021 pursuant to the 10 Day Notice; however, the tenant was permitted use and occupancy by the landlord until October 31, 2021.

In the event the tenant has not yet vacated or abandoned the rental unit, I provide the landlords with an Order of Possession effective two (2) days after service upon the tenant.

The tenant did eventually satisfy the rental arrears for October 2021 and I find no rent is outstanding for October 2021; however, I accept the unopposed evidence before me that the tenant failed to vacate the rental unit and return possession of the unit to the landlords by October 31, 2021 and her failure to do so and her continued occupation of the rental unit caused the landlords to suffer loss of rent for the month of November 2021 and up until today's date at least. Therefore, I award the landlords loss of rent for the month of November 2021 plus loss of rent on a per-diem basis for December 1, 2021 to today's date of December 16, 2021 calculated as: $\$1800.00 + (\$1800.00 \times 16/31 \text{ days}) = \2729.03 .

I further award the landlords recovery of the \$100.00 filing fee paid for this application.

I authorize the landlords to retain the tenant's security deposit and pet damage deposit in partial satisfaction of the amounts awarded to the landlords with this decision.

In light of the above, the landlords are provided a Monetary Order to serve and enforce upon the tenant, calculated as follows:

Loss of rent: November 1, 2021 to December 16, 2021	\$2729.03
Filing fee	100.00
Less: security deposit and pet damage deposit	<u>(1000.00)</u>
Monetary Order	\$1829.03

The landlords are at liberty to make another Application for Dispute Resolution if they seek to recover any other damages or losses against the tenant.

Conclusion

The landlords are provided an Order of Possession effective two (2) days after service upon the tenant in the event the tenant has not already vacated or abandoned the rental unit.

The landlords are authorized to retain the tenant's security deposit and pet damage deposit and are provided a Monetary Order for the balance owing of \$1829.03 to recover loss of rent up to today's date, plus recovery of the filing fee, net of the tenant's deposits.

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: December 16, 2021

Residential Tenancy Branch