



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNRL-S, OPR, FFL**

Introduction

On November 30, 2021 the Landlord submitted an Application for Dispute Resolution (the “Application”), seeking relief pursuant to the *Residential Tenancy Act* (the “Act”) for the following:

- a monetary order for unpaid rent;
- an order granting authorization to retain the security deposit;
- an order of possession for unpaid rent; and
- an order granting recovery of the filing fee.

The Landlord’s Agent N.P. and the Tenant attended the hearing at the appointed date and time. The parties confirmed service and receipt of their respective Application and documentary evidence packages. As there were no issues raised, I find the above-mentioned documents were sufficiently served pursuant to Section 71 of the Act.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
2. Should the Landlord be authorized to apply the security deposit against their claim, in accordance with Section 38 and 72 of the *Act*?
3. Is the Landlord entitled to an order of possession for unpaid rent, pursuant to Section 55 of the *Act*?
4. Is the Landlord entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following: the tenancy began on November 1, 2005. Rent in the amount of \$898.00 is due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$370.00, which the Landlord continues to hold. The Tenant continues to occupy the rental unit.

The Landlord's Agent testified the Tenant did not pay rent in the amount of \$898.00 when due on November 1, 2021. Subsequently, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated November 20, 2021 (the "10 Day Notice") with an effective vacancy date of November 30, 2021. The Landlord stated that the 10 Day Notice was served to the Tenant by posting it to the Tenant's door on November 20, 2021. The Landlord provided the first two pages of the three-page 10 Day Notice, as well as a witnessed proof of service in support.

The Landlord's Agent testified that he received full payment of the outstanding rent from the Tenant on December 1, 2021. The Landlord's Agent stated that this payment was made outside of the 5 days time limit provided to the Tenant in accordance with the 10 Day Notice. As such, the Landlord is seeking an order of possession. The Landlord's Agent confirmed that the Tenant currently does not owe any amount of unpaid rent.

The Tenant responded by stating that he commonly works out of town and did not retrieve the 10 Day Notice until December 1, 2021, at which point he came to realize that he had inadvertently forgotten to pay November 2021 rent to the Landlord. The Tenant stated that he immediately paid the outstanding balance of rent to the Landlord. The Tenant stated that he had only received the first two pages of the three-page 10 Day Notice. The Landlord's Agent stated that he posted two pages and the slid the third page under the Tenant's door. The Tenant stated that he did not receive the third page.

Analysis

Section 26 of the Act explains that the Tenant must pay rent when it is due under the Tenancy Agreement, whether or not the Landlord complies with this 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. As I do not have any evidence before me that the Tenant had a right under this Act to deduct any of their rent, I find that the Tenant is in breach of Section 26 of the Act.

Section 46 of the Act states a Landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

I find based on the Landlord's testimony that the Landlord served the 10 Day Notice dated November 20, 2021 with an effective vacancy date of November 30, 2021, to the Tenant by posting the first two pages to the Tenant's door on November 20, 2021.

Pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to be received three days later. I find the Tenant is deemed to have received the 10 Day Notice on November 23, 2021.

Section 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution. Therefore, the Tenant had until November 28, 2021 to either pay the outstanding rent owed to the Landlord in full, or make an Application for dispute resolution.

I accept that the parties agreed that the Tenant paid the full amount of outstanding rent to the Landlord on December 1, 2021. As the Tenant did not pay all the rent owed according to the 10 Day Notice within 5 days and there is no evidence before me that the Tenant disputed the 10 Day Notice, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the corrected effective date of the 10 Day Notice, December 3, 2021, pursuant to section 46(5) of the *Act*.

I note that Section 55 of the Act states that in order for a Landlord to be granted an order of possession, the Landlord's notice to end tenancy must comply with Section 52 of the Act relating to form and content.

Section 52 of the Act States; In order to be effective, a notice to end a tenancy must be in writing and must;

- (a) be signed and dated by the landlord or tenant giving the notice,*
- (b) give the address of the rental unit,*
- (c) state the effective date of the notice,*
- (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,*
- (d.1) for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and*
- (e) when given by a landlord, be in the approved form.***

In this case, I find that the Landlord only provided the first two pages of the 10 Day Notice in their documentary evidence. The Landlord's Agent stated during the hearing, that he posted the first two pages of the 10 Day Notice to the Tenant's door while he slid the third page under the Tenant's door. The Tenant stated that he only received the first two pages and that there was no third page provided to him.

In this case, I find that the Landlord provided insufficient evidence to demonstrate that the Tenant was served with the three page 10 Day Notice in its entirety. I find that even if the Landlord's Agent slid the third page of the 10 Day Notice under the Tenant's door, this is not an approved method of service in accordance with Section 88 of the Act. Furthermore, I find that the third page of the 10 Day Notice contains important information for the Tenant to consider when being served such a Notice. As such, I find

that the 10 Day Notice dated November 20, 2021 is not in the approved form as not all three pages were sufficiently served to the Tenant. I therefore cancel the 10 Day Notice and order that the tenancy continue until it is ended in accordance with the Act.

As the Landlord was not successful in their Application, I find that they are not entitled to the recovery of the filing fee.

Conclusion

The Landlord's Application is dismissed. The 10 Day Notice dated November 20, 2021 is cancelled as it does not meet the requirements of Section 52 of the Act. The tenancy will continue until ended in accordance with the Act.

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: February 10, 2022

Residential Tenancy Branch