



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR-DR, OPR-DR-PP, FFL

Introduction

This participatory hearing was ordered pursuant to an Interim Decision issued on December 20, 2021 by an Arbitrator reviewing the landlord's Application for Dispute Resolution by Direct Request whereby the landlord applied for an Order of Possession and Monetary Order for unpaid rent. The Interim Decision should be read in conjunction with this final decision.

At the participatory hearing, the landlord appeared and the landlord was affirmed. Since the tenants did not appear, I explored service of hearing materials upon them.

The landlord testified that he sent the Interim Decision and the Notice of Dispute Resolution Proceeding to each tenant by registered mail on December 21, 2021. The landlord provided two registered mail receipts, including tracking numbers, as proof of service (I have recorded the tracking numbers on the cover page of this decision). The landlord testified that the registered mail packages were returned as unclaimed. The landlord also confirmed that the tenants continue to hold possession of the rental unit.

Section 90 of the Act deems a person to be in receipt of documents mailed to them five days after mailing, even if the person refuses to accept or pick up their mail. Pursuant to section 90 of the Act, I deemed the tenants to be in receipt of the hearing documents sent to them on December 21, 2021 five days later, on December 26, 2021, and I continued to hear from the landlord without the tenants present.

During the hearing, the landlord requested the monetary claim be amended to include unpaid and/or loss of rent suffered after the landlord issued the 10 Day Notice to End Tenancy for Unpaid Rent and while awaiting this hearing. Rule 4.6 of the Rules of Procedure provide:

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 request to amend the monetary claim to include loss of rent for the months after serving the 10 Day Notice to reflect the tenants' continued occupation of the rental unit while awaiting this proceeding, without paying rent, is reasonably foreseeable and I amend the monetary claim accordingly.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord entitled to a Monetary Order for unpaid and/or loss of rent?
3. Award of the filing fee.

Background and Evidence

The parties executed a written tenancy agreement for a month to month tenancy that commenced on February 1, 2015. The landlord collected a security deposit of \$600.00 and the tenants were required to pay rent of \$1200.00 on the first day of every month.

The landlord testified that the tenants were having difficulty paying the rent and starting May 2019 the landlord orally agreed to accept a lower monthly rent of \$1000.00.

The landlord testified that the tenants often paid the rent in partial, sporadic payments. For the year of 2020, the landlord testified that the tenants failed to pay \$3700.00 of the rent, as set out below:

Time period	Payments received	Rent payable
January 2020 – December 2020 (\$1000 x 12 months)		12000.00
March 2020	\$1200.00 + \$2200.00	
April 2020	\$1300.00	
July 2020	\$500.00 + \$500.00	
August 2020	\$800.00	
September 2020	\$700.00	
October 2020	\$1100.00	
Totals	\$8300.00	12000.00
Difference = rent owing for 2020	\$3700.00	

In the year 2021, the landlord recorded the following amounts charged and paid for the period of January 2021 through September 2021 by way of a handwritten ledger submitted into evidence:

Time period	Payments received	Rent payable
January 2020 – September 2021 (\$1000 x months)		9000.00
February 2021	\$880.00 + \$880.00	
March 2021	\$1000.00	
April 2021	\$1000.00	
May 27, 2021	\$1500.00	
Totals	\$5260.00	9000.00
Difference = rent owing for 2021	\$3740.00	
Plus: carry forward from 2020	\$3700.00	
Total owing as of Sept 1, 2021	\$7440.00	

On September 16, 2021 the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice") and posted it to the door of the rental unit on September 16, 2021. The landlord's wife witnessed the posting and signed a Proof of Service.

The landlord testified that the tenants did not make any payments toward the rental arrears after serving the 10 Day Notice. Nor, did the tenants file to dispute the 10 Day Notice; yet, the tenants continue to occupy the rental unit.

The landlord seeks to obtain an Order of Possession as soon as possible given the several months that have passed without receiving any rent. The landlord also seeks to recover the unpaid rent of \$7440.00 plus loss of rent for the six months of October 2021 through March 2021 while awaiting this hearing.

Documentary evidence provided by the landlord includes: the tenancy agreement; the 10 Day Notice; a signed Proof of Service for service of the 10 Day Notice; a handwritten ledger showing the rent payable and rent payments received in 2021; and, registered mail receipts.

I noted that on the bottom of the handwritten ledger is a notation of a three month repayment plan calling for three payments of \$2480.00. The landlord explained that he would have been willing to accept the three payments of \$2480.00 for the months of October 2021, November 2021 and December 2021 to satisfy the arrears and continue the tenancy; however, the tenants made no payments and the offer is no longer available to the tenants.

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 or Utilities ("10 Day Notice"). 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 parties had agreed to a monthly rent of \$1200.00 when the tenancy formed but the landlord was agreeable to reducing the rent to \$1000.00 starting May 2019. I accept the unopposed submissions of the landlord that the tenants fell behind in their rent obligation of \$1000.00 per month, leaving a balance owing of \$3700.00 for 2020. The tenants further failed to pay all of the rent that was due in 2021 and as of September 2021 the rental arrears amounted to

\$7440.00. I was not provided any evidence to suggest the tenants had a legal right to withhold rent payable.

I also accept that the landlord posted a 10 Day Notice on the rental unit door on September 16, 2021 and I find that it is deemed received by the tenants three days later pursuant to section 90 of the Act, or September 19, 2021. Accordingly, I find the tenants had until September 24, 2021 to either pay the outstanding rent or file to dispute the 10 Day Notice. Since the tenants did neither, I find the tenancy ended 10 days after the 10 Day Notice was deemed received, or September 29, 2021. Therefore, I find the landlord is entitled to regain possession of the rental unit and I provide the landlord with an Order of Possession effective two (2) days after service upon the tenants.

Based upon the unopposed evidence before me, I find the landlord entitled to recover from the tenants the unpaid rent that was outstanding as of September 2021 in the sum of \$7440.00. I further find the landlord entitled to recover loss of rent incurred from October 2021 until now while awaiting for this hearing, or \$6000.00, since the tenants did not vacate the rental unit when required and caused the landlord to suffer further loss.

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the rent owed to the landlord. I also award the landlord recovery of the \$100.00 filing fee paid for this application.

In light of the above, the landlord is provided a Monetary Order to serve and enforce upon the tenants, calculated as follows:

Unpaid rent up to and including September 2021	\$ 7440.00
Loss of rent incurred for October 2021 – March 2022	6000.00
Filing fee	100.00
Less: security deposit	<u>(600.00)</u>
Monetary Order	\$12940.00

Conclusion

The landlord is provided an Order of Possession effective two (2) days after service.

The landlord is authorized to retain the tenant's security deposit and is provided a Monetary Order for the balance owing of \$12940.00 to serve and enforce upon the tenants.

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: March 29, 2022

Residential Tenancy Branch