



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNRL-S MNDCL-S FFL

Introduction

This hearing was convened as a result of the landlords' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) for an order of possession based on an undisputed 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice), for a monetary order in the amount of \$4,100.00 for unpaid rent or utilities, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to offset any amount owing with the tenants' security deposit, and to recover the cost of the filing fee.

The landlords, MM, KB and AB (landlords) attended the teleconference hearing and gave affirmed testimony. During the hearing the landlords were given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated December 17, 2021 (Notice of Hearing), application and documentary evidence (Hearing Package) were considered. The landlords testified that the Hearing Packages were both served personally on tenant BS who accepted both Hearing Packages at the rental unit on December 19, 2021 at 3:06 p.m. The landlords testified that KS served the Hearing Packages, while AB witnessed the personal service. Based on the undisputed evidence before me, I find the tenants were sufficiently served as of December 19, 2021 in accordance with the Act.

Furthermore, considering that the tenants did not attend the hearing, I consider this matter to be undisputed by the tenants and the hearing continued without the tenants present in accordance with Residential Tenancy Branch (RTB) Rules of Procedure

(Rules) 7.1 and 7.3, which address the consequences for not attending a dispute resolution proceeding.

Preliminary and Procedural Matters

The landlords were informed at the start of the hearing that recording of the dispute resolution is prohibited under the RTB Rule 6.11. The landlords were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the landlords were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. The landlords did not have any questions about my direction pursuant to RTB Rule 6.11.

In addition, the landlords confirmed their email addresses at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them. The landlords also confirmed the tenants' email address during the hearing, which is listed on the application.

During the hearing, the landlords stated that the tenants vacated the rental unit on January 15, 2022, since filing their application on December 14, 2021. As a result, the landlords confirmed they no longer require an order of possession as the tenants vacated the rental unit. In addition, the landlords stated that the tenants have not provided their written forwarding address since vacating the rental unit and as a result, the landlords no longer want to offset their claim with the security deposit as the tenants are required to provide their written forwarding address to the landlords. Given the above, I will not consider an order of possession or to offset any amount owing with the security deposit.

Furthermore, the landlords testified that in addition to the rent owed November and December of 2021, the tenants have subsequently not paid the rent for January 2022. As a result, the landlords requested to amend their application to include rent owed for January 2022 of \$1,000.00. I find this request to amend the application does not prejudice the respondent tenants as the tenants would be aware or ought to be aware that rent is due pursuant to the tenancy agreement. Therefore, I amend the application to include January 2022 rent of \$1,000.00. I also find there was an addition error in the landlords' claim, which listed \$2,000.00 in unpaid rent for November and December of 2021 twice in the same application, which I find to be an inadvertent error. I have corrected the inadvertent error pursuant to sections 64(3)(c) and 62(3) of the Act. I find

the total claim is \$3,100.00 comprised of \$1,000.00 for each of November 2021, December 2021 and January 2022, plus the \$100.00 filing fee.

Issues to be Decided

- Are the landlords entitled to a monetary order under the Act, and if so, in what amount?
- Are the landlords entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

The landlords confirmed that a written tenancy agreement but was not submitted in evidence. The landlords testified that a month-to-month tenancy began on December 15, 2020, and ended on January 15, 2022 when the tenants vacated the rental unit. The landlords testified that monthly rent of \$1,000.00 was due on the first day of each month.

The landlords testified that the tenants have failed to pay rent as follows:

1. November 2021 rent owing of \$1,000.00
2. December 2021 rent owing of \$1,000.00
3. January 2022 rent owing of \$1,000.00

The landlords confirmed the tenants were served with the 10 Day Notice on November 26, 2021, and that the 10 Day Notice indicated that \$1,000.00 in rent was due as of November 1, 2021. The landlords stated that the tenants failed to pay any rent since being served personally with the 10 Day Notice. The effective vacancy date listed on the 10 Day Notice was December 9, 2021.

The landlords are seeking \$3,000.00 in unpaid rent/loss of rent plus the \$100.00 filing fee.

Analysis

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

As the tenants were served with the Hearing Package and did not attend the hearing, I consider this matter to be unopposed by the tenants. Section 26 of the Act applies and states:

Rules about payment and non-payment of rent

26(1) **A 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.

[emphasis added]

Section 46(5) of the Act applies and states:

Landlord's notice: non-payment of rent

46(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant **(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and (b) must vacate the rental unit to which the notice relates by that date.**

[emphasis added]

Based on the above, I find the tenants breached section 26 and 46(5) of the Act by failing to pay rent as claimed on the date that it was due and failed to vacate the rental unit by December 9, 2021, which was the effective vacancy date listed on the 10 Day Notice, and which was not disputed by the tenants. As a result, I find the landlords' application is fully successful in the amount of \$3,100.00; comprised as claimed above, and also includes the \$100.00 filing fee pursuant to section 67 and 72 of the Act. I grant the landlords a monetary order pursuant to section 67 of the Act, for the amount owing by the tenants to the landlords in the amount of **\$3,100.00** as claimed.

I caution the tenants not to breach sections 26 and 46(5) of the Act in the future.

Conclusion

The landlords' application is fully successful.

The landlords have established a total monetary claim of \$3,100.00 as described above.

The landlord has been granted a monetary order pursuant to section 67 of the Act, for the amount owing by the tenants to the landlords in the amount of \$3,100.00. The landlords must serve the tenants with the monetary order and may enforce the monetary order in the Provincial Court (Small Claims Division).

The tenants have been cautioned as described above.

This decision will be sent by email to both parties. The monetary order will be sent by email to the landlords only for service on the tenants.

The tenants are informed that they can be held liable for all costs related to enforcing the monetary order under the Act.

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: March 2, 2022

Residential Tenancy Branch