



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL-S, FFL

Introduction

The Landlord seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- An order for possession pursuant to s. 55 after issuing a 10-Day Notice to End Tenancy signed on October 20, 2021;
- A monetary order pursuant to s. 67 for unpaid rent; and
- Return of their filing fee pursuant to s. 72.

J.C. appeared as agent for the Landlord. The Tenant did not attend, nor did someone appear on their behalf.

Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Tenant did not attend, the hearing was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure.

The Landlord’s agent affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The Landlord’s agent confirmed that they were not recording the hearing.

The Landlord’s agent advised that the Notice of Dispute Resolution and evidence was served on the Tenant by way of registered mail sent on November 23, 2021. The Landlord’s application materials were also posted to the Tenant’s door on the same date. I find that the Landlord’s application materials were served in accordance with s. 89 of the *Act* by both having it posted to the door and sent via registered mail. Pursuant to s. 90, I deem that the Tenant received the application materials on November 26, 2021.

Preliminary Issue – Style of Cause

At the outset of the hearing, I clarified with the Landlord's agent who, in fact, was the Landlord. The Landlord confirmed that the corporate Landlord, as listed in the tenancy agreement, is the correct Landlord.

Accordingly, I amend the application pursuant to Rule 4.2 of the Rules of Procedure such that the style of cause reflects the corporate Landlord as listed in the tenancy agreement.

Preliminary Issue – Tenant Vacating the rental unit

The Landlord's agent advised that the Tenant vacated the rental unit on January 9, 2022. Given this, the Landlord's request for an order for possession is no longer relevant as the Landlord has already taken back possession of the rental unit.

The hearing proceeded strictly on the issue of the Landlord's monetary claim for unpaid rent.

Issue(s) to be Decided

- 1) Is the Landlord entitled to an order for unpaid rent?
- 2) Is the Landlord entitled to the return of the filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

The Landlord's agent confirmed the following details with respect to the tenancy:

- The Tenant took possession of the rental unit on March 1, 2019.
- Rent of \$2,255 was due on the first day of each month over the period relevant for this dispute.
- The Landlord holds a security deposit of \$1,100.00 in trust for the Tenant.

A copy of the written tenancy agreement was put into evidence by the Landlord.

As mentioned above, the Tenant vacated the rental unit on January 9, 2022.

The Landlord's agent indicated that the 10-Day Notice was issued after rent was not paid when due on October 1, 2021. The Landlord's agent indicates that rent was not paid for October 2021, November 2021, December 2021, and January 2022. The Landlord's agent confirmed no partial payments were received from the Tenant over that period.

The Landlord seeks unpaid rent from October 2021 to January 2022.

Analysis

The Landlord seeks a monetary order for unpaid rent.

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

Pursuant to s. 26(1) of the *Act*, a tenant must pay rent when it is due whether or not the landlord complies with the *Act*, the Regulations, or the tenancy agreement unless the *Act* grants the tenant the right to deduct all or a portion of the rent. In the present circumstances, I find that rent of \$2,255.00 was due on the first day of each month based on the undisputed evidence of the Landlord and the tenancy agreement.

I accept that the rent was not paid in accordance with the Tenancy Agreement and the Tenant had no lawful reason for withholding rent from the Landlord. I find that the Tenant breached their obligation to pay rent as set out in the Tenancy Agreement. This breach gives rise to the Landlord's claim for a monetary award for unpaid rent.

I note that the Tenant did not file to dispute the 10-Day Notice and would have been conclusively presumed to have accepted the end of the tenancy on the effective date of the notice as per s. 46(5) of the *Act*. In this case, that would have been on November 1, 2021, which is the date listed in the 10-Day Notice. The Tenant would have been overholding after this date. I find that the Tenant, by continuing to reside within the rental unit until January 9, 2022 caused the Landlord to suffer financial loss in the form of lost rent over the relevant period. I am satisfied that the Landlord has established their claim for compensation in lieu of rent for the period in which the Tenant was overholding.

I further note that the Tenant vacated the rental unit on January 9, 2022. I find that the full amount of rent that would have been due under the tenancy agreement is owed under the circumstances as the Landlord could not find a new tenant due to the Tenants continued occupation of the rental unit for the partial month. Had the Tenant not been overholding, rent would in full would have been due on January 1, 2022 as per the tenancy agreement.

The Landlord could not mitigate their damages as the Tenant continued to reside within the rental unit, which prevented their ability to re-rent the rental unit.

I find that the Landlord has established a monetary claim in the following amount:

Month	Rent Due	Rent Paid	Amount Owed
October 2021	\$2,255.00	\$0.00	\$2,255.00
November 2021	\$2,255.00	\$0.00	\$2,255.00
December 2021	\$2,255.00	\$0.00	\$2,255.00
January 2022	\$2,255.00	\$0.00	\$2,255.00
TOTAL OWED			\$9,020.00

I direct pursuant to s. 72(2) that the Landlord retain the security deposit of \$1,100.00 in partial satisfaction of the total amount owed by the Tenant.

Conclusion

I find that the Landlord has established a monetary claim in the amount of \$9,020.00 for unpaid rent and compensation in lieu of rent.

As the Landlord was successful in their application, I find that they are entitled to the return of their filing fee. Pursuant to s. 72(1) of the *Act*, I order that the Tenant pay the Landlord's filing fee.

I make a total monetary order in the following amount:

Item	Amount
Unpaid rent and Compensation in lieu of rent	\$9,020.00
Landlord's filing fee to be paid by Tenant pursuant to s. 72(1)	\$100.00
Less security deposit to be retained by the Landlord as directed under s. 72(2)	-\$1,100.00
TOTAL	\$8,020.00

Pursuant to s. 67 of the *Act*, I order that the Tenant pay **\$8,020.00** to the Landlord.

It is the Landlord's obligation to serve this order on the Tenant. If the Tenant does not comply with the monetary order, it may be filed by the Landlord with the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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 14, 2022

Residential Tenancy Branch