



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPC, OPR, MNRL, MNDL, MNDCL, FFL**

Introduction

This hearing was convened as a result of the Landlords' application under the *Residential Tenancy Act* (the "Act") for:

- an Order of Possession for non-payment of rent pursuant to sections 46 and 55;
- an Order of Possession for cause pursuant to sections 47 and 55
- a Monetary Order for unpaid rent and/or utilities pursuant to section 55;
- a Monetary Order for compensation to make repairs that the Tenants, their pets or their guests caused during the tenancy pursuant to section 67;
- a Monetary Order for compensation for monetary loss or other money owed by the Tenants pursuant to section 67; and
- authorization to recover the filing fee for the Landlords' their application from the Tenants pursuant to section 72.

One of the three Tenants ("IK") and the two Landlords ("CW" and "PC") attended this hearing and they were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

CW testified the Landlords served the Notice of Dispute Resolution Proceeding, an amendment to the Landlords' application ("Amendment") and some of their evidence ("NDRP Package") on each of the Tenants by registered mail on January 10, 2022. CW provided the tracking numbers for the registered mailings to corroborate her testimony regarding service of the NDRP Packages on each of the three Tenants. I find each of the Tenants were served with the NDRP Package in accordance with sections 88 and 89 of the Act. Pursuant to section 90 of the Act, I find each of the Tenants were deemed to have been served with the NDRP Package on January 15, 2022, being five days after its posting by the Landlords.

CW stated that the Landlords served additional evidence on each of the Tenants by registered mail on January 21, 2022. CW provided the tracking numbers for the registered mailings to corroborate her testimony regarding service of the Landlords' additional evidence on each of the three Tenants. I find each of the Tenants were served with the Landlords' additional evidence in accordance with sections 88 and 89 of the Act. Pursuant to section 90 of the Act, I find each of the Tenants were deemed to have been served with the Amendment and the Landlords' additional evidence on January 26, 2022, being five days after its posting by the Landlords.

IK stated the Tenants did not serve any evidence on the Landlords for these proceedings.

Preliminary Matter – Severance and Dismissal of Landlords' Claims

The Landlords' application includes claims for (i) a monetary order for compensation to make repairs that the Tenants, their pets or their guests caused during the tenancy and; (ii) a monetary order for compensation for monetary loss or other money owed by the Tenants. Rule 2.3 of the RoP states:

2.3 Related issues Claims made in the application must be related to each other.

Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Where a claim or claims in an application are not sufficiently related, I may dismiss one or more of those claims in the application that are unrelated. Hearings before the RTB are generally scheduled for one hour and Rule 2.3 is intended to ensure disputes can be addressed in a timely and efficient manner. Based on the above, I dismiss with leave to reapply the Landlords' claims for (i) a monetary order for compensation to make repairs that the Tenants, their pets or their guests caused during the tenancy and; (ii) a monetary order for compensation for monetary loss or other money owed by the Tenants.

Issues to be Decided

Are the Landlords entitled to:

- an order of possession for unpaid rent?
- An order of possession for cause?
- a monetary order for unpaid rent and/or utilities?
- recover the filing fee for the Landlords' application?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Landlords' application and my findings are set out below.

CW stated the tenancy commenced on March 1, 2018, with a fixed term ending February 28, 2019, and the tenancy then continued then on a month-to-month basis. The Tenants were required to pay rent of \$1,450.00 on the 1st day of each month. The Tenants paid a security deposit of \$725.00 and the Landlord confirmed she was holding it in trust on behalf of the Tenants. CW stated the Landlords and Tenants agreed to a rent increase of \$150.00 per month as the Landlords undertook upgrades and repairs to the rental unit. CW did not submit copies of the Tenants' written consent to the rent increase or a copy of the Notice of Rent Increase. When I asked, CW confirmed the Landlords did not obtain a written consent from the Tenants to a rent increase nor did the Landlords ever serve the Tenants with a Notice of Rent Increase since the commencement of the tenancy.

CW testified the Landlords served a 10 Day Notice on the Tenants' door on November 6, 2021 ("First 10 Day Notice"). IK confirmed the Tenants received the First 10 Day Notice. I find the First 10 Day Notice was served on the Tenants in accordance with section 88 of the Act. CW testified she served a 10 Day Notice on the Tenants' door on December 4, 2021 ("Second 10 Day Notice"). IK confirmed the Tenants received the Second 10 Day Notice. I find the Second 10 Day Notice was served on the Tenants in accordance with section 88 of the Act.

CW testified the Tenants owed the Landlords \$150.00 for rental arrears for November 2021 and \$150.00 for rental arrears for December 2021. CW stated the Tenants abandoned the rental unit and the Landlords did not take back possession of the rental unit until January 16, 2022. CW stated the Tenants owed the Landlords rental arrears of \$300.00 for November and December 2021 and \$1,600.00 for January 2022 calculated as follows:

Date	Rent Owed	Paid	Balance
November 1 to 30, 2021	\$1,600.00	\$1,450.00	\$150.00
December 1 to 31, 2021	\$1,600.00	\$1,450.00	\$300.00
January 1 to 16, 2022	\$1,600.00	\$0.00	\$1,900.00
Total	\$4,800.00	\$2,900.00	\$1,900.00

CW testified the Landlords served a One Month Notice for Cause dated November 26, 2021 ("1 Month Notice") on the Tenants' door on November 26, 2021. CW submitted a completed Proof of Service on Form RTB-34 to corroborate her testimony of service of the 1 Month Notice on the Tenants. I find the 1 Month Notice was served on the Tenants in accordance with section 88 of the Act.

CW stated the Tenants did not give the Landlords notice they were moving out of the rental unit. CW stated that Tenants did not return the key to the rental unit when they vacated the rental unit. As a result, the Landlords did not realize the Tenants had vacated the rental unit until January 16, 2022.

IK testified the Tenants moved out of the rental unit on December 28, 2021. IK stated the Landlords were continually harassing them. IK stated that, as the Landlord had served them with the First and Second 10 Day Notices, the Tenants simply moved out without giving the Landlords any verbal or written notification they were vacating the rental unit on December 28, 2021. IK testified there had been a hearing on January 25, 2022, before a different arbitrator in connection with a different application for dispute resolution. IK stated that, at that hearing, the arbitrator found the Landlords did not comply with the requirements of the Act for increasing the rent and the arbitrator issued a monetary order for \$2,350.00 to recover the overpayment of rent. IK stated the \$150.00 the Landlord claimed in each of the First and Second 10 Day Notices for rental arrears were based on the \$150.00 per month rent increase that the arbitrator had found in the earlier hearing to have been made were made not in accordance with the requirements of the Act.

Analysis

1. Landlords' Claim for Order of Possession

Sections 46(1) through 46(5) of the Act state:

- 46(1) 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.
- (2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.
- (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.
- (4) Within 5 days after receiving a notice under this section, the tenant may
 - (a) pay the overdue rent, in which case the notice has no effect, or
 - (b) dispute the notice by making an application for dispute resolution.
- (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 in italics]

CW testified the Landlords served the First 10 Day Notice on the Tenants' door on November 6, 2021 ("First 10 Day Notice"). IK acknowledged the Tenants received the First 10 Day Notice. I find the First 10 Day Notice was served in accordance with section 88 of the Act. Pursuant to section 90 of the Act, the Tenants were deemed to

have received the First 10 Day Notice on November 9, 2021. Pursuant to section 46(4) of the Act, the Tenants had until November 14, 2021, to dispute the First 10 Day Notice.

CW testified the Landlords served a 10 Day Notice on the Tenants' door on December 4, 2021 ("Second 10 Day Notice"). IK acknowledged the Tenants received the Second 10 Day Notice. I find the Second 10 Day Notice was served in accordance with section 88 of the Act. Pursuant to section 90 of the Act, the Tenants were deemed to have received the Second 10 Day Notice on December 7, 2021. Pursuant to section 46(4) of the Act, the Tenants had until December 12, 2021, to dispute the Second 10 Day Notice.

IK admitted the Tenants did not dispute either the First or Second 10 Day Notices within the 5-day dispute period permitted by section 46(4) of the Act. Although the Tenants did not make an application for to dispute the First and Second 10 Day Notices, the Landlords nevertheless have the onus to prove, on a balance of probabilities, that the First and Second 10 Day Notices were issued for a valid reason. IK testified an application for dispute resolution ("Previous Application") had been made to dispute a rent increase made by the Landlords of \$150.00 per month. I have reviewed the Previous Application and found the name of the applicant in the Previous Application is different from the names of the applicants in the application before me. As a result, I find that the legal principle of *res judicata* does not apply to the application before me. I must therefore determine whether the \$150.00 per month rent increase was made in accordance with the requirements of section 43(1) of the Act.

CW stated the Landlords have not obtained the written consent from the Tenants to a rent increase nor have the Landlords ever served the Tenants with a Notice of Rent Increase since the commencement of the tenancy. *Residential Tenancy Policy Guideline 37* ("PG 37") provides guidance to landlords on implementing rent increases under the Act. Part C of PG 37 states:

C. AGREED RENT INCREASE

A tenant may voluntarily agree to a rent increase that is greater than the maximum annual rent increase. Agreements must be in writing, must clearly set out the rent increase (for example, the percentage increase and the amount in dollars), and must be signed by the tenant. A Notice of Rent Increase must still be issued to the tenant three full months before the increase is to go into effect. The landlord should attach a copy of the written agreement signed by the tenant to the Notice of Rent Increase given to the tenant.

Although the Landlords may have obtained the verbal consent of the Tenants to a rent increase of \$150.00 per month, the Landlords did not comply with section 43(1) of the Act and the requirements set out in PG 37. I find the monthly rent payable by the Tenants was \$1,450.00 throughout the entire tenancy. As the amount of unpaid rent of \$150.00 claimed in each of the First and Second 10 Day Notices arose from a rent increase that did not comply with section 43(1) of the Act, I find the First and Second 10 Day Notices were not issued for a valid reason. Based on the foregoing, I cancel the First and Second 10 Day Notices.

As the Tenant's have vacated the rental unit, an Order of Possession is not required by the Landlord. Accordingly, I dismiss without leave to reapply the Landlord's claim for an Order of Possession based on the 1 Month Notice.

2. Landlords' Claim for Unpaid Rent

Although I have cancelled the First and Second 10 Day Notices, I must consider whether the Landlords are entitled to recover rent for January 2022. Section 45(1) of the Act states:

- 45 (1)** A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
- (a) is not earlier than one month after the date the landlord receives the notice, and
 - (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

IK admitted the Tenants did not serve the Landlords a notice to end tenancy at least one clear month before January 1, 2022. *Residential Tenancy Branch Policy Guideline 3* states in part:

[...]

A tenant is liable to pay rent until a tenancy agreement ends. Sections 45 and 45.1 of the RTA (section 38 of the MHPTA) set out how a tenant may unilaterally end a tenancy agreement. Where a tenant vacates or abandons the premises before a tenancy agreement has ended, the tenant must compensate the landlord for the damage or loss that results from their failure to comply with the legislation and tenancy agreement (section 7(1) of the RTA and the MHPTA). This can include the

unpaid rent to the date the tenancy agreement ended and the rent the landlord would have been entitled to for the remainder of the term of the tenancy agreement.

[...]

Pursuant to PG 3, I find the Tenants owe the Landlords rental arrears for the month of January 2022 in the amount of \$1,450.00. The Tenants must compensate the Landlords this amount. Pursuant to section 67 of the Act, I find the Tenants are required to pay the Landlords \$1,450.00 for the rental arrears for January 2022. Pursuant to section 72(2)(b), the Landlords may deduct the Tenants' security deposit of \$725.00 from the rental arrears of \$1,450.00 owed by the Tenants, leaving a balance of \$725.00.

3. Landlords' Claim for Reimbursement of Filing Fee

As the Landlords have been partially successful in their application, they may recover the \$100.00 filing fee for their application from the Tenants pursuant to section 72(1) of the Act.

Conclusion

Pursuant to section 67 of the Act, I order that the Tenants pay the Landlords \$825.00 representing the following:

Description	Amount
Rental Arrears	\$1,450.00
Landlord's Filing Fee	\$100.00
Security Credit	-\$725.00
Total	\$825.00

It is the Landlords' obligation to serve this order on the Tenants. If the Tenants do not comply with this order, it may be filed 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 11, 2022

Residential Tenancy Branch