



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, OPM, MNRL-S, MNDCL-S, OPU

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on December 14, 2021 (the “Application”). The Landlord applied as follows:

- For an Order of Possession based on a Mutual Agreement
- For an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities
- To recover unpaid rent
- For compensation for monetary loss or other money owed
- To keep the security deposit
- To recover the filing fee

The Landlord appeared at the hearing with their son, N.K., to assist. Nobody appeared at the hearing for the Tenant. I explained the hearing process to the Landlord and N.K. who did not have questions when asked. I told the Landlord and N.K. that they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Landlord and N.K. provided affirmed testimony.

The Landlord submitted evidence prior to the hearing. The Tenant did not submit evidence. I addressed service of the hearing package and Landlord’s evidence.

N.K. testified that the hearing package and evidence were sent to the Tenant by registered mail on January 19, 2022, and that Tracking Number 241 relates to this package. N.K. confirmed that the notice about the registered mail was received by the Landlord and posted to the Tenant’s door because mail for the Tenant comes to the Landlord. N.K. confirmed that the Landlord received the package back after the Tenant

failed to pick it up and posted the package to the Tenant's door. N.K. testified that the Landlord sent the hearing package and evidence by registered mail again, emailed it to the Tenant and sent it by text message to the Tenant.

Based on the undisputed testimony of N.K., I am satisfied the Tenant was served with the hearing package and evidence in accordance with sections 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the "Act"). Pursuant to section 90(a) of the Act, the Tenant is deemed to have received the hearing package and evidence on January 24, 2022. I find the Landlord complied with rule 3.1 of the Rules in relation to the timing of service.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Landlord and N.K. were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence and oral testimony of the Landlord and N.K. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession based on a Mutual Agreement?
2. Is the Landlord entitled to an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities?
3. Is the Landlord entitled to recover unpaid rent?
4. Is the Landlord entitled to compensation for monetary loss or other money owed?
5. Is the Landlord entitled to keep the security deposit?
6. Is the Landlord entitled to recover the filing fee?

Background and Evidence

N.K. testified as follows.

There is a verbal tenancy agreement between the parties. The tenancy started April 15, 2021, and is for a fixed term of one year. Rent is \$1,250.00 due on the first day of each month. The Tenant paid a \$625.00 security deposit and no pet damage deposit.

The Landlord and Tenant signed the Mutual Agreement in evidence ending the tenancy January 01, 2022.

The Tenant currently owes \$5,000.00 in unpaid rent up until March of 2022 and owes for the five days of April of 2022. The Tenant did not have authority under the *Act* to withhold rent.

The Tenant is required to pay for utilities pursuant to the verbal tenancy agreement between the parties and currently owes \$284.69 for utilities.

The Landlord is seeking an Order of Possession effective two days after service on the Tenant.

The Landlord submitted documentary evidence.

Analysis

I accept the undisputed testimony of H.K. and based on it, as well as the documentary evidence submitted, I make the following findings.

Order of Possession

Section 44 of the *Act* states:

44 (1) A tenancy ends only if one or more of the following applies...

(c) the landlord and tenant agree in writing to end the tenancy...

Section 55(2)(d) of the *Act* states:

(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution...

(d) the landlord and tenant have agreed in writing that the tenancy is ended.

I find the Landlord and Tenant did agree in writing to end the tenancy January 01, 2022, on the Mutual Agreement to End a Tenancy form submitted. I find the Tenant signed

the Mutual Agreement. The Tenant was bound by the Mutual Agreement and was required to vacate the rental unit by January 01, 2022. The Landlord is entitled to an Order of Possession pursuant to section 55(2)(d) of the *Act* and is issued an Order of Possession effective two days after service on the Tenant.

Unpaid rent and utilities

Section 7 of the *Act* states:

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 26(1) of the *Act* states:

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.

Section 57 of the *Act* states:

(3) A landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

I accept that the Tenant owes \$1,250.00 in rent each month pursuant to the tenancy agreement between the parties. I accept that the Tenant has failed to pay rent as required. I accept that \$5,208.33 in rent and overholding compensation is owed to the Landlord as of the hearing date. I accept that the Tenant did not have authority under the *Act* to withhold rent. The Landlord is entitled to recover the \$5,208.33 owing.

I accept the Tenant is required to pay for utilities pursuant to the tenancy agreement between the parties. I accept that the Tenant currently owes \$284.69 for utilities and find the Landlord is entitled to recover this amount.

Filing fee

Given the Landlord was successful in the Application, I award them \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*.

Summary

The Landlord is entitled to recover \$5,593.02. The Landlord can keep the \$625.00 security deposit pursuant to section 72(1) of the *Act*. I issue the Landlord a Monetary Order for the remaining \$4,968.02 pursuant to section 67 of the *Act*.

Conclusion

The Landlord is entitled to an Order of Possession effective two days after service on the Tenant. This Order must be served on the Tenant and, if the Tenant does not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

The Landlord is entitled to recover \$5,593.02. The Landlord can keep the \$625.00 security deposit. I issue the Landlord a Monetary Order for the remaining \$4,968.02. This Order must be served on the Tenant and, if the Tenant does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: April 05, 2022

Residential Tenancy Branch