



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlords on January 13, 2022 (the “Application”). The Landlords applied as follows:

- For an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”)
- To recover unpaid rent
- To recover the filing fee

This was an adjourned direct request.

The Landlord appeared at the hearing with A.C. to assist. A.C. appeared for Landlord B.J. The Tenant appeared at the hearing with the Witness. The Witness was not involved in the hearing until required. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties and Witness provided affirmed testimony.

A.C. provided the correct rental unit address which is reflected on the front page of this decision.

The Landlords submitted evidence prior to the hearing. The Tenant did not submit evidence. I addressed service of the hearing package and Landlords’ evidence and the Tenant confirmed receipt of these.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence submitted as well as all oral testimony of the parties and Witness. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Landlords entitled to an Order of Possession?
2. Are the Landlords entitled to recover unpaid rent?
3. Are the Landlords entitled to recover the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence. The tenancy started March 28, 2019. Rent is \$1,000.00 per month due on the first day of each month. The Tenant paid a \$500.00 security deposit. The agreement is signed by the parties.

A.C. testified that the tenancy agreement is accurate, and the Landlords own the rental unit.

The Tenant testified that the paperwork and tenancy agreement relate to the sale of the rental unit.

The Tenant agreed to the Landlords being issued an Order of Possession for the rental unit because the Tenant testified that they moved out of the rental unit December 15, 2021.

A.C. testified that \$4,000.00 in rent is outstanding for December of 2021 to March of 2022. A.C. testified that the Tenant phoned the Landlords February 04, 2022, and told the Landlords they had moved out; however, occupants remain in the rental unit. A.C. said they believe the Tenant let the occupants move into the rental unit. A.C. sought to keep the security deposit towards unpaid rent.

The Tenant testified that they were told in October of 2021 that they had four months to move out of the rental unit and so found a new place mid-December. The Tenant testified that they phoned and told the Landlords they were moving. The Tenant

testified that they did not pay rent because the Landlords told them they could have four months of rent free.

A.C. denied that the Landlords told the Tenant they could have four months of rent free. A.C. testified that the 10 Day Notice was posted to the door of the rental unit December 19, 2021. A.C. testified that the only other notice to end tenancy issued to the Tenant was a One Month Notice issued at the start of December with an effective date of February 28, 2022. A.C. testified that the Tenant did not dispute the One Month Notice.

The Tenant acknowledged receipt of the 10 Day Notice and testified that it was posted to the door of the rental unit before December 19, 2021. The Tenant testified that they did not dispute the 10 Day Notice. The Tenant denied that they let occupants move into the rental unit and denied that occupants remain in the rental unit. The Tenant testified that the door to the rental unit would not close when they moved out and that the rental unit was in an unlivable state. The Tenant testified that people were in the yard of the rental unit and living next door to the rental unit when the Tenant moved out.

The Witness testified that the Tenant told the Witness the Tenant had four months of free rent because the Landlords were tearing the rental unit down. The Witness testified that the door to the rental unit could not shut which is how occupants got into the rental unit after the Tenant moved out.

Analysis

I find there was a tenancy agreement between the parties based on the written tenancy agreement in evidence.

1. Are the Landlords entitled to an Order of Possession?

The Landlords are entitled to an Order of Possession based on the 10 Day Notice because the Tenant agreed to the Landlords being issued an Order of Possession given the Tenant moved out of the rental unit December 15, 2021.

2. Are the Landlords entitled to recover unpaid rent?

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 find based on the written tenancy agreement that the Tenant was required to pay \$1,000.00 per month in rent by the first day of each month.

I accept that the Tenant did not pay rent from December of 2021 to March of 2022 because the Tenant did not dispute this. I do not accept that the Landlords allowed the Tenant to withhold rent for December to March because the parties disagreed on this. I would expect an agreement about not paying rent to be in writing given the importance of paying rent in a tenancy. In the absence of further evidence, I am not satisfied the Landlords allowed the Tenant to withhold rent. The Tenant did not point to any other authority to withhold rent.

Based on the testimony of the parties and a Proof of Service in evidence, I accept that the 10 Day Notice was served on the Tenant in accordance with section 88(g) of the *Act* on December 19, 2021. The Tenant did not provide a date they received the 10 Day Notice and therefore the Tenant is deemed to have received the 10 Day Notice December 22, 2021, pursuant to section 90(c) of the *Act*. I find the Tenant did not pay the outstanding rent based on my findings above. I find the Tenant did not dispute the 10 Day Notice based on the Tenant's testimony. Given this, the tenancy ended January 01, 2022, pursuant to the 10 Day Notice and section 46 of the *Act*.

I accept that the Tenant moved out of the rental unit mid-December; however, I also accept that the Tenant did not advise the Landlords of this until February. I find the Tenant is required to pay rent up until January 01, 2022, when the tenancy ended. I find this because I am satisfied the Landlords were not aware the Tenant had moved

out prior to this date. However, I do not accept that the Tenant is responsible for paying rent after the end date of the tenancy because the Landlords issued the 10 Day Notice and should have checked the rental unit to see if the Tenant had vacated in accordance with the 10 Day Notice. It was open to the Tenant to accept the 10 Day Notice and move out. Further, I am not satisfied the Tenant is responsible for the occupants living in the rental unit at this point because the parties gave conflicting testimony about this and there is no further evidence before me to support that the Tenant allowed occupants to live in the rental unit.

Given the above, I find the Landlords are entitled to December rent as well as one day of rent for January for a total of \$1,032.25.

3. Are the Landlords entitled to recover the filing fee?

Given the Landlords have been partially 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 Landlords are entitled to an Order of Possession.

The Landlords are entitled to \$1,132.25. The Landlords can keep the \$500.00 security deposit pursuant to section 72(2) of the *Act*. I issue the Landlords a Monetary Order for the remaining \$632.25 pursuant to section 67 of the *Act*.

Conclusion

The Landlords are issued 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 Landlords can keep the \$500.00 security deposit. I issue the Landlords a Monetary Order for \$632.25. 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 27, 2022

Residential Tenancy Branch