



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPR, MNRL-S, MNDL-S, MNDCL-S, FFL**

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession, for a monetary order for unpaid rent or utilities, for monetary compensation for damages to the property, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee from the tenants.

The landlord's agents attended the hearing. As the tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord's agents testified the Application for Dispute Resolution and Notice of Hearing were served, by registered mail sent on August 12, 2022, Canada post tracking numbers were provided as evidence of service. The Canada Post history shows the packages were returned unclaimed by the tenants.

Section 90 of the Act determines that a document served in this manner is deemed to have been served, three days later. I find that the tenants have been duly served in accordance with the Act. Refusal or neglect to pickup the packages does not override the deemed service provisions of the Act.

The landlord's agents testified that they also provided an extra copy to the tenants by posting on the door of the rental unit on August 15, 2022.

At the outset of the hearing the landlord's agents stated that the rent has now been paid in full and up to date. Therefore, they do not need a monetary for the unpaid rent.

The landlord's agent stated they are still seeking an order of possession as the rent was not paid within the statutory time limit.

Issues to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy began on January 1, 2022. Rent in the amount of \$1,200.00 was payable on the first of each month. A security deposit of \$600.00 was paid by the tenants.

The landlord's agent testified that the tenant were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") issued on July 13, 2022, for failure to pay rent in the amount of \$825.00, by posting to the door of the rental unit on July 13, 2022. Filed in evidence is a copy of the Notice, and proof of service.

The landlord's agents testified that the tenants did not dispute the Notice and the outstanding rent was paid on August 26, 2022, not within five days after they received the Notice as required by the Act. The agents stated that the tenants rent was accepted for use and occupancy only as they were not reinstating the tenancy. Filed in evidence is a receipt dated August 26, 2022, for the unpaid rent due for July 2022, and the late payment of rent for August.

The landlord's agents testified that the tenant is now caught up on the rent; however, they do not want the tenancy to continue, and they issued receipts for subsequent rent for use and occupancy. The landlord seeks an order of possession. Filed in evidence are receipts for subsequent rent payments issued for use and occupancy.

The landlord's agent testified that on June 14, 2022, the tenants, who have a mother/daughter relationship were in an argument. The agent stated the tenant, who is the daughter of the other tenant broke the front door to the 24 unit building and was arrested. The agent stated that they had to pay to have the door temporarily secured at the cost of \$131.00, until they could get a replacement, which cost the amount of \$569.39. The landlord seeks to recover the damage to the door in the total amount of \$700.38. Filed in evidence are receipts for the broken door.

Analysis

Based on the above, the testimony, and evidence, and on a balance of probabilities, I find as follows:

The tenants were served with the Notice on July 13, 2022, by posting to the door. I find the tenants were deemed served three days later, July 16, 2022. I find the Notice complies with Section 52 of the Act.

The Notice informed the tenants that the notice would be cancelled if the rent was paid within five days. The notice also explains the tenants had five days to dispute the notice.

The tenants have not paid the outstanding rent within five days and did not apply to dispute the notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice. I find the tenancy legally ended on July 24, 2022, the effective date of the Notice and the tenants are overholding the premises.

While I accept the tenants paid the outstanding rent five weeks later, August 26, 2022; however, the landlord was not reinstating the tenancy and the receipts for all subsequent rent payments were for use and occupancy. This means the landlord was not reinstating the tenancy.

As the landlord has accepted occupancy rent for December 2022, I find the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **1:00 PM on December 31, 2022**. A copy of this order must be served upon the tenants. This order may be filed in the Supreme Court and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

I accept the landlord's agent's testimony that the tenants were in some kind of argument and the main door to the 24-unit building was damaged and one of the tenants was arrested. I find the tenants are responsible for the damage caused by their actions and are responsible for the cost to secure the building and the repair of the door. I find the landlord is entitled to recover the cost of \$700.38.

I find that the landlord has established a total monetary claim of **\$800.38** comprised of damages and the \$100.00 fee paid by the landlord for this application.

I order that the landlord retain the security deposit of \$600.00 in partial satisfaction of the claim and I grant the landlord an order pursuant to section 67 of the Act, for the balance due of **\$200.38**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The tenants failed to pay rent with five days and did not file to dispute the notice to end tenancy. The tenants are presumed under the law to have accepted that the tenancy ended on the effective date of the notice to end tenancy.

The landlord is granted an order of possession. The landlord is granted a monetary order for damages to the building and may keep the security deposit in partial satisfaction of the claim. I grant a monetary order for the balance due.

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: December 16, 2022

Residential Tenancy Branch