



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPC, MNRL-S, MNDCL-S, FFL**

Introduction

This hearing dealt with an application by the Landlord pursuant to the Residential Tenancy Act (the “Act”) for the following orders:

1. an Order of Possession based on a One Month Notice to End Tenancy for Cause (the One Month Notice), pursuant to sections 47 and 55;
2. a Monetary Order pursuant to section 67; and,
3. authorization to recover the filing fee for this application, pursuant to section 72.

JH (the “Landlord”) attended the hearing which lasted approximately 20 minutes. BB and AC (the “Tenants”) did not attend the hearing or submit evidence.

The Landlord testified that she hand-delivered the application and evidence to the Tenants on November 26th, 2022. Included in her evidence is a Proof of Service (Form # RTB-44) for each tenant. The Proof of Service appears to contain signatures on the forms acknowledging service of the document. Based on the testimony and evidence of the Landlord, I find the Tenants were served notice of this hearing and the Landlord’s application on November 26th, 2022, in a manner complying with section 89(1) of the Act.

The Landlord was given full opportunity under oath to be heard, to present evidence, and to make submissions.

The Landlord confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession based on the One Month Notice?

If so, is the Landlord entitled to a Monetary Order for unpaid rent?

Is the Landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have considered the documentary evidence and the testimony of the Landlord, not all of the details of their submissions and arguments are reproduced here. The relevant and important aspects of the Landlord's claims and my findings are set out below.

The Landlord testified that the parties entered into a written tenancy agreement starting December 1, 2021. Monthly rent is \$1,200.00 payable on the first of each month. The Landlord collected a security deposit in the amount of \$600.00 from the Tenants, which the Landlord continues to hold in trust. A copy of the Tenancy Agreement is included in the evidence.

The Landlord testified that the Tenants were served with the One Month Notice by pre-approved email on October 24th, 2022. The Landlord further testified that she also had her caretaker post the Notice on the door. The Landlord included a Proof of Service indicating that the One Month Notice was served by email and by attaching a copy to the door or other conspicuous place where the person resides October 24, 2022. The email is attached to the Proof of Service document.

The Tenants are still residing in the unit. The Landlord is seeking an order of possession.

The Landlord testified that the Tenants have been repeatedly late paying rent. The Landlord provided documentation indicating that rent was paid late for the months of August 2022, September 2022, October 2022, November 2022, and January 2023. The Landlord stated that she received a partial rent payment for the month of February in the amount of \$600.00 from AC; however, BB did not pay their share of the rent for the month of February. The Landlord confirmed that the only outstanding rent at this time is \$600.00 for the month of February. The Landlord requested a monetary order in the amount of \$600.00 to recover the outstanding rent.

The Landlord indicated that she would like to recover the filing fee.

Analysis

The Landlord provided affirmed testimony that she served the Tenants with the One-Month Notice to their pre-approved email addresses.

Section 89(2)(f) of the Act allows a Landlord to serve an application for an order of possession by any means of service provided for in the regulations. Section 43(2) of the Residential Tenancy Regulations (the “Regulations”) states that

For the purposes of section 89 (1) (f) [*special rules for certain documents*] of the Act, the documents described in section 89 (1) of the Act may be given to a person by emailing a copy to an email address provided **as an address for service by the person.**

[my emphasis added]

I have considered the Landlord’s submissions and evidence and I am not satisfied that the Landlord has provided sufficient evidence to establish that the Tenants provided their email addresses as addresses for service prior to service of the One Month Notice. As a result, I do not accept that the One Month Notice was served by email in accordance with section 43(2) of the Regulations or section 89(2)(f) of the Act.

During the hearing, the Landlord provided testimony that she had her caretaker post the One Month Notice to the door of the rental unit. This is consistent with the Proof of service document which indicates that the One Month Notice was served by attaching a copy to the door or other conspicuous place where the person resides. Based on the Landlord’s affirmed testimony, I find that the Notice to End Tenancy served by attaching a copy to the door of the rental unit on October 24th, 2022, as indicated in the Proof of Service document.

Pursuant to section 90 of the Act a document served in accordance with section 89 of the Act is deemed to be received if given or served by attaching to a door, on the third day after it is attached. In this case, the Tenant is deemed to have received the materials on October 27th, 2022, in accordance with section 90(c) of the Act.

The effective date of the One Month Notice is stated as November 25th, 2022. I have determined that the One Month Notice is deemed to have been received on October 27, 2022. In accordance with section 53(2) of the Act, the effective date of the Notice is amended to November 28, 2022.

I have reviewed the Notice and having amended the effective date as above I find that it complies with the form and content required pursuant to section 52 of the Act.

Section 47(1)(b) of the Act allows a Landlord to end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent. I have reviewed the Landlord's undisputed evidence and testimony and I find they had sufficient cause to end the tenancy based on the Tenant's repeated late payments of rent.

In accordance with section 47(4) of the Act, a tenant who receives a One Month Notice has 10 days to make an application for dispute resolution in which they may dispute the notice. In this case, the Tenant did not dispute the One Month Notice. As such, I find the Tenants are conclusively presumed under section 47(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

Section 55(2)(c) of the Act states that a landlord may request and order of possession of a rental unit when a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution, and the time for making that application has expired.

In this case, the Landlord has given the Tenants a notice to end the tenancy, the Tenants have not disputed the notice, and the time for making such an application has expired. As such, I find that the Landlord is entitled to an Order of Possession pursuant to section 55(4)(a) of the Act which is effective two days after service of the order upon the Tenants.

I also grant the Landlord a monetary order requiring the payment of the outstanding \$600.00 in rent in accordance with section 55(4)(b) of the Act.

The Landlord continues to hold the tenant's security of \$600.00 in trust. In accordance with the off-setting provisions of section 72 of the Act, I order the Landlord to retain the Tenants' security deposit in partial satisfaction of the monetary orders.

As the Landlord was successful in this application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application.

The Landlord testified that they anticipate bailiff services will be required to remove the Tenants and expect the unit will not be re-rentable the unit for a period of one to three months because of damage to the unit.

I have considered the Landlord's testimony; however, at this time, the Tenants continue to reside in the unit, pay rent, and they have not been removed by bailiff services. As a result, I find that these applications are premature and unrelated to the application for an Order of Possession. On that basis, I dismiss these applications with leave to reapply at the relevant time.

Conclusion

The Landlord's application for an Order of Possession of the rental unit is granted. The Order of Possession is effective two days after service of the order upon the tenants.

The Landlord is entitled to a monetary order of \$100.00 for recovery of the filing fee.

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*.

Item	Amount
Landlord's Monetary Award for unpaid rent	\$600.00
Retention of the Security Deposit	-\$600.00
Filing Fee	\$100.00
Total Monetary Order	\$100.00

Dated: February 08, 2023

Residential Tenancy Branch