



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OPR, MNRL, MNDL, MNDCL, FFL

Introduction

The Landlord applied for dispute resolution (“Application”) and seeks the following:

- an Order of Possession on an undisputed 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) under section 55(2)(b) of the *Residential Tenancy Act* (the “Act”);
- compensation for unpaid rent under sections 26, 46 and 67 of the Act;
- compensation for damage caused by the tenant to the rental unit under section 67 of the Act;
- compensation for monetary loss or other money owed under section 67 of the Act; and
- the cost of the filing fee under section 72 of the Act.

The Applicant Landlord called into this teleconference at the date and time set for the hearing of this matter. The Landlord affirmed to tell the truth during the hearing and was given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Although I waited until 11:35 A.M. to enable the Respondent Tenants to connect with this teleconference hearing scheduled for 11:00 A.M., the Tenants did not attend.

I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. During the hearing, I also confirmed from the online teleconference system that the Landlord and I were the only parties who had called into this teleconference.

Rule 7.3 of the *Rules of Procedure* allows a hearing to continue in the absence of the respondent.

The Landlord testified they served the Notice of Dispute Resolution Package (“Materials”) on the Tenants by attaching to the door of the rental unit on April 6, 2023. A Proof of Service form signed by a witness confirming service of the Materials was entered into evidence by the Landlord. In light of the above evidence, I find that pursuant to section 89 of the Act, the Landlord’s Materials were sufficiently served to the Tenants.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to a Monetary Order for unpaid rent?
3. Is the Landlord entitled to a Monetary Order for damage caused by the tenant to the rental unit?
4. Is the Landlord entitled to a Monetary Order for loss or other money owed?
5. Is the Landlord entitled to recover the filing fee for the Application from the Tenant?

Background and Evidence

The attending party was given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

The Landlord confirmed the following regarding the tenancy:

- The Tenancy started around five years ago. Their son, S.B., was the sole tenant.
- Rent was \$1,000.00 per month which was “usually” due on the first day of the month.
- No security deposit or pet damage deposit was requested by the Landlord.
- In October 2022, the Landlord became aware of another occupant, T.W., in the rental unit. Following this, they increased the rent to \$1,400.00 per month.
- There is no written tenancy agreement.
- Both S.B. and T.W. still occupy the rental unit.

The Landlord testified as follows. They issued the Notice as they were not receiving full payment of rent. Over the past year they have received "a little bit of rent". They further explained that Tenant S.B., their son had paid rent for the first four years of the tenancy and then they started gambling about a year ago and rent was paid inconsistently since then.

In October 2022, the Landlord found out that S.B. had allowed another person, T.W., to occupy the rental unit. S.B. had apparently told T.W. that they did not need to pay rent. The Landlord stated they increased rent to \$1,400.00 per month after they found out about T.W. occupying the unit.

The Landlord stated they did not want the T.W. to stay and asked them to leave the rental unit. I was referred to a document entered into evidence which is dated November 1, 2022, is signed by the Landlord and T.W. which states "I have informed [T.W.] that he needs to move out of [address of rental unit] by Dec 01 2022".

Outstanding rent was discussed. The Landlord stated that S.B. owes \$9,415.00 in unpaid rent and T.W. owes \$2,800.00. I was referred to a record of rent payments that was entered into evidence by the Landlord. The record details payments from January 2022 onwards, when only S.B. was a Tenant. Then from October 2022 payments for both T.W. and S.B. are shown. The record indicates that T.W. last paid rent in February 2023 where an amount of \$500.00 was paid. S.B. last paid rent in December 2022 where \$50.00 was paid.

I was also referred to bank statements submitted into evidence by the Landlord which cover the period January 2022 to March 2023 inclusive. They indicate the last payment from T.W. was on February 14, 2023 in the amount of \$500.00. The statements also show the rent payment record for S.B. to be inaccurate. A payment of \$500.00 on December 2, 2022 from S.B. is seen, which is not accounted for on the rent record and the latest payment is for \$50.00 on January 30, 2023 which is also not accounted for in the rent record.

A Proof of Service form entered into evidence indicates that the Notice was served on January 2, 2023, however a copy of the Notice itself was not entered into evidence by either party so it is not possible for me to confirm the amount of outstanding rent that was stated on the Notice, or if the Notice complies with the form and content requirements set out in section 52 of the Act.

The Landlord provided the following testimony regarding their requests for monetary compensation.

The Tenants damaged the property by making holes in the walls. I was referred to seven photographs entered into evidence by the Landlord. Six of the photographs show holes in the wall around a foot above the floor. There appears to be a total of nine holes throughout the rental unit. There is also a photograph of the kitchen of the rental unit with garbage seen on the floor and two cupboard doors are shown to be missing.

The Landlord stated they requested the sum of \$15,000.00 in respect of compensation for damage to the rental unit on their Application as this is the amount their brother charged them to renovate the suite above the rental unit. No documentation to corroborate the monetary amount sought was entered into evidence.

The Landlord also seeks a further \$2,400.00 in compensation of for monetary losses or other money owed. This amount is made up of \$1,400.00 for removal of an RV, \$300.00 for a car insurance deductible paid by the Landlord after S.B. damaged the Landlord's vehicle and \$700.00 for damage to a television that S.B. punched. No evidence was submitted in respect of any of the above stated amounts.

Analysis

Order of Possession and Unpaid Rent

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some, or all, of the rent. Additionally, section 46(1) of the Act allows a landlord to end a tenancy if the tenant does not pay rent on time by issuing a 10 Day Notice to End Tenancy for Unpaid Rent.

There is no written tenancy agreement to confirm terms of the agreement or who is party to the agreement. Therefore, I must rely on the undisputed testimony of the Landlord and the Act to determine the particulars of the tenancy agreement, or if one exists.

The Act defines a tenancy agreement as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit. Therefore, a tenancy agreement can be formed without it being in writing.

Based on the undisputed testimony of the Landlord, I accept that over a period of four years, S.B. paid rent of \$1,000.00 per month. I have considered the possibility of there being a licence to occupy in place, which differ from tenancy agreements as they can be revoked at any time. Though Policy Guideline 9 - Tenancy Agreements and Licences to Occupy confirms that factors such as non-payment of a security deposit and family relationships may distinguish a licence to occupy from a tenancy agreement, I find that because of the consistent payment of rent for a significant amount of time, I find that there was a tenancy agreement in place between the Landlord and S.B.

However, the Landlord increased rent in October 2022 and accepted payments from a second party, T.W., when they learned of their occupancy of the rental property. Though the Landlord had asked T.W. to vacate the rental unit by December 1, 2022, rent payments were accepted by the Landlord from T.W. after this date.

Based on the evidence and testimony from the Landlord, I find there was the expectation that T.W. and S.B. would pay \$700.00 each per month for rent from October 2022. There is no evidence that the Landlord indicated to the Tenants that payments were received for use and occupancy only. Thus, I find that a second tenancy agreement was formed between the Landlord and S.B. and T.W. as joint tenants.

Based on the Landlord's testimony and evidence, I accept that rent was not paid, however the amount of unpaid rent and which tenancy agreement the unpaid rent related to was not made clear to me.

The Landlord sought vastly differing monetary sums from S.B. and T.W. and it appears to me that their Application relates two separate tenancies, the one between the Landlord and S.B. which commenced five years ago and the one with S.B. and T.W. which commenced in October 2022.

The basis for the amount of rent sought was also not clear to me and the record of rent payments received was contradictory to the Landlord's banking records. For these reasons, and the fact that a copy of the Notice was not submitted into evidence, I dismiss the Landlord's request for an Order of Possession and Monetary Order for unpaid rent without leave to reapply.

Monetary Claims

Section 59(2)(b) of the Act states that an application for dispute resolution must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings. Rule 2.5 of the *Rules of Procedure* also states that to the extent possible, an applicant must submit with their application a detailed calculation of any monetary claim being made.

The only evidence the Landlord submitted to support their request for monetary compensation was photographs of the holes in the wall of the rental unit and the missing cupboard doors. There was a lack of any evidence to support the requested monetary amounts such as quotes, receipts or invoices. In light of this, I find the Landlord has failed to provide sufficient particulars of their claim that is being made against the respondents. Therefore, I dismiss with leave to reapply the Landlord's claims for monetary compensation.

As the Landlord's Application was not successful, they must bear the cost of the filing fee. The Landlord's request to recover the filing fee from the Tenant is dismissed without leave to reapply.

Conclusion

The Application is dismissed. The tenancy continues.

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: May 12, 2023

Residential Tenancy Branch