



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding KARE PROPERTY MANAGEMENT GROUP LTD. and [Tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNRL – S, FFL

Introduction

This hearing was set to deal with the Landlord's applications for an Order of Possession and Monetary Order for unpaid rent that were made against each tenant of the rental unit. The applications were joined together and set to be heard at the same time.

The property manager appeared for the hearing but there was no appearance on part of the Tenants.

Service of hearing materials

The hearing was originally scheduled for August 13, 2024 by the Residential Tenancy Branch when the proceeding package was prepared. The Landlord sent the proceeding package to each of the Tenants via registered mail on July 19, 2024; however, the Tenants did not pick up the registered mail (registered mail tracking numbers provided on the cover page of this decision). Section 90 of the Act deems a person to be in receipt of documents five days after mailing even if the person refuses to accept or pick up their mail. Pursuant to section 90 of the Act, I deem the Tenants to be served with the proceeding packages five days after mailing, on July 24, 2024.

The Residential Tenancy Branch subsequently rescheduled the hearing to August 15, 2024 and prepared notices for the rescheduled hearing. The Landlord was given notices of the rescheduled hearing to serve to the Tenants. The property manager testified that the notices for the rescheduled hearing were attached to the rental unit door when it was received from the Residential Tenancy Branch.

The property manager confirmed the Tenants are still residing in the rental unit although it appears they are preparing to move.

I find I am satisfied the Landlord met its obligation to serve each of the Tenants with notification of their claims and this proceeding and I continued to hear from the Landlord's agent without the Tenants present.

Preliminary Issues

The owner of the property created two tenancy agreements, one for each Tenant, even though the Landlord considers this to be a co-tenancy, not a tenancy in common. Each tenancy agreement provides for payment of rent in the amount of \$1,850.00 and a \$500.00 security deposit. The property manager testified that the rent for the rental unit is \$1,850.00 in total and not \$1,850.00 from each Tenant. Also, only \$500.00 was received for a security deposit, in total, not \$500.00 from each Tenant.

Based on these unopposed submissions before me, I accept that this is a co-tenancy despite the creation of two tenancy agreement documents, and I proceed on the basis this is a co-tenancy.

The property manager requested authorization to retain the security deposit to be used toward the rental arrears. I permitted the amendment as it would reduce any Monetary Order I would issue and would be non-prejudicial to the Tenants.

The property manager did not seek to amend the claim to add unpaid or loss of rent for August 2024. Accordingly, the Landlord may pursue such a claim at a later date if the Landlord so chooses.

Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession for unpaid rent?
2. Is the Landlord entitled to a Monetary Order for unpaid rent?
3. Is the Landlord authorized to retain the Tenant's security deposit in partial satisfaction of the rental arrears?
4. Is the Landlord entitled to recover the filing fee from the Tenants?

Background and Evidence

The tenancy started on April 1, 2024 and the Landlord collected a security deposit of \$500.00. The monthly rent is \$1,850.00 due on the first day of every month.

The Landlord submitted that the Tenants were \$50.00 short in paying the rent for June 2024 and the Tenants did not pay any rent for the month of July 2024.

On July 8, 2024 the property manager issued a 10 Day Notice to each Tenant indicating rent of \$1,900.00 was outstanding and an effective date of July 21, 2024. The 10 Day Notices were posted to the rental unit door on July 8, 2024 at 11:30 a.m. by the property manager and a witness. A Proof of Service form was signed by both the property manager and the witness. The Landlord submitted that the Tenants did not pay the outstanding rent or dispute the 10 Day Notices. The Tenants continue to occupy the rental unit and did not pay any rent for August 2024.

The Landlord provided copies of the tenancy agreements; the 10 Day Notices; signed Proof of Service forms for service of the 10 Day Notices; a worksheet showing the payments received for rent in June 2024; and, the service agreement between the property management company and the owner of the property.

Analysis

Under section 26 of the Act, a Tenant is required to pay rent when due in accordance with their tenancy agreement, even if the Landlord has violated the Act, regulations or tenancy agreement, unless the Tenant has a legal right to withhold rent. There was no evidence before me to suggest the Tenants had a legal right to withhold rent.

Where a Tenant does not pay rent the Landlord is at liberty to serve the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. When a Tenant receives a 10 Day Notice the Tenant has five days to pay the outstanding rent to nullify the 10 Day Notice or the Tenant has five days to dispute the 10 Day Notice by filing an Application for Dispute Resolution. If a Tenant does not pay the outstanding rent or dispute the 10 Day Notice within five days then, pursuant to section 46(5) of the Act, the Tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the 10 Day Notice.

I accept the unopposed evidence before me that the Tenants were required to pay rent in the total amount of \$1,850.00, on the first day of every month. I further accept that the Tenants failed to pay \$50.00 of the rent due for June 2024 and the Tenants failed to pay any of the rent that was due for July 2024. Therefore, I find the Landlord was in a position to issue 10 Day Notice(s) to the Tenants on July 8, 2024.

I accept the unopposed evidence before me that the 10 Day Notices were posted to the door of the rental unit on July 8, 2024. As such, the Tenants are deemed to have received the 10 Day Notices on July 11, 2024 and the Tenants had until July 16, 2024 to either pay the outstanding rent or file to dispute the 10 Day Notices. Since the Tenants did neither the Tenants are conclusively presumed to have accepted the end of the tenancy and vacate the rental unit by July 21, 2024. Therefore, I find the Landlord is entitled to regain possession of the rental unit and I provide the Landlord with an Order of Possession effective seven (7) days after service upon the Tenants.

Based upon the unopposed evidence before me, I find the Landlord entitled to recover from the Tenants the unpaid rent for June 2024 and July 2024 in the sum of \$1,900.00 [\$50.00 + \$1,850.00].

I authorize the Landlord to retain the Tenant's security deposit in partial satisfaction of the rent owed to the Landlord. I also award the Landlord recovery of the \$100.00 filing fee paid for this application.

In light of the above, the Landlord is provided a Monetary Order to serve and enforce upon the Tenants, calculated as follows:

Unpaid rent for June 2024 and July 2024	\$1,900.00
Filing fee	100.00
Less: security deposit	<u>(500.00)</u>
Monetary Order for Landlord	\$1,500.00

The Landlord is provided with the Monetary Order to serve and enforce upon the Tenants. Should the Tenants not comply with the Monetary Order it may be enforced in Provincial Court (Small claims).

Conclusion

The Landlord is provided an Order of Possession effective seven (7) days after service upon the Tenants.

The Landlord is authorized to retain the Tenant's security deposit and is provided a Monetary Order for the balance of \$1,500.00.

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: August 15, 2024

Residential Tenancy Branch