



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL – S, FFL

Introduction

This hearing was scheduled to deal with a landlord's application, via teleconference call, for an Order of Possession and a Monetary Order for unpaid rent and authorization to retain the tenant's security deposit. The landlord appeared at the hearing; however, there was no appearance on part of the tenant despite leaving the teleconference call open for approximately 25 minutes.

Since the tenant was not present or represented at the hearing, I explored service of hearing documents upon the tenant. The landlord testified that the hearing documents were sent to the tenant via registered mail at the rental unit address on September 21, 2018 but the registered mail was returned as unclaimed. The landlord provided the registered mail receipt, including tracking number, as proof of service. The landlord also testified that the tenant had given the landlord a notice to end tenancy effective August 31, 2018 and indicated he would be going into the hospital and that his friend/occupant of the unit was authorized to perform the move-out inspection with the landlord. The tenant did not provide the landlord with any other service address, the landlord is unaware of the tenant's whereabouts, and the tenant's friend/occupant has remained in possession of the rental unit. In these circumstances, I deem the tenant sufficiently served with the hearing documents by way of registered mail sent to him at the rental unit, pursuant to the authority afforded me under section 71 of the Act.

Having heard the tenant gave the landlord a written notice to end tenancy, I ordered the landlord to provide me with a copy of the tenant's notice. The landlord did as ordered and I have considered the document in making this decision.

On another procedural matter, the landlord had indicated it was seeking compensation of \$5,000.00 on the Application for Dispute Resolution and the accompanying details indicated the landlord was seeking unpaid rent of \$1,054.25 for September 2018 and possibly \$1,054.25 for each of the months of October 2018 and November 2018. During the hearing, the landlord limited its claim to loss of rent for the months of

September 2018 and October 2018. I amended the landlord's monetary claim accordingly as it is non-prejudicial to the tenant to do so.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to recover compensation from the tenant in the amount equivalent to the unpaid or loss of rent for the months of September 2018 and October 2018?
3. Is the landlord authorized to retain the tenant's security deposit?

Background and Evidence

The tenancy started on September 1, 2015 and the tenant paid a security deposit of \$475.00. The tenancy was initially for a one year fixed term and then it continued on a month to month basis. The rent was initially set at \$950.00, payable on the first day of every month, but has increased during the tenancy to be \$1,054.25 at the end of the tenancy.

On July 23, 2018 the tenant gave the landlord a written notice to end tenancy with an effective date of August 31, 2018. On the tenant's notice the tenant indicated that he would be going into the hospital and he authorized another person, the occupant of the rental unit, to perform the move-out inspection with the landlord. The landlord proceeded to show the unit to prospective tenants and had secured new tenants for the unit starting September 1, 2018. The tenant's occupant did not vacate the rental unit by August 31, 2018 and has remained in possession of the unit. Fortunately, the landlord had another vacant unit to put the new tenants in while waiting to regain possession of this rental unit.

On September 4, 2018 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent on the door of the rental unit. No response or rent was received from the tenant or the occupant. The landlord did not receive any rent from the tenant or the occupant for the month of September 2018 or October 2018. The landlord confirmed that it did not reinstate the tenancy with the tenant or enter into a new tenancy agreement with the occupant.

The landlord seeks to regain possession of the rental unit and recover loss of rent for the months of September 2018 and October 2018 in the amount of \$1,054.25 for each month.

As documentary evidence for this proceeding the landlord provided a copy of the tenancy agreement; Notices of Rent Increase; the tenant's notice to end tenancy; the 10 Day Notice to End Tenancy for Unpaid Rent dated September 4, 2018; a statement of account; and, the registered mail receipt for service of the hearing documents upon the tenant.

Analysis

Section 44 of the Act provides for all the ways a tenancy comes to an end. There are several ways a tenancy may end, including a tenant's notice to end tenancy as provided under section 45 of the Act.

In this case, the tenant gave the landlord a notice to end tenancy on July 23, 2018 to end the tenancy effective August 31, 2018 which the landlord accepted. Upon review of the notice, I find it is a valid and enforceable notice to end tenancy. I further find there is insufficient evidence to show the landlord and tenant reinstated the tenancy considering there was no such agreement evidenced in writing and the tenant did not pay any rent after August 2018. Nor is there any evidence to suggest the landlord entered into a new tenancy agreement with the occupant. Accordingly, I find the tenancy legally ended on August 31, 2018.

At the end of a tenancy, a tenant is required to return vacant possession of the unit to the landlord. Based upon the unopposed testimony before me, I find the tenant failed to meet that obligation by ensuring all possessions were removed and persons occupying the rental unit vacated the rental unit on or before August 31, 2018. Accordingly, I find the landlord is entitled to regain possession of the rental unit pursuant to section 55(2) of the Act and with this decision I provide the landlord an Order of Possession effective two (2) days after service. The landlord may serve the Order of Possession by giving it to the tenant or the occupant of the rental unit in person, or posting it on the door of the rental unit.

Section 57 of the Act provides that a tenant who fails to return vacant possession of the rental unit to the landlord at the end of the tenancy is "over-holding". Where a tenant is over holding, section 57(3) provides that "A landlord may claim compensation from an over holding tenant for any period that the over holding tenant occupies the rental unit after the tenancy is ended". I accept the landlord's unopposed submission that the person permitted to occupy the rental unit by the tenant has continued to occupy the rental unit and I find the tenant to be over-holding. While the tenant may have ceased to reside at the rental unit, as stated above, the tenant has the obligation to ensure

vacant possession was returned to the landlord at the end of the tenancy. Accordingly, I find the landlord's request to recover loss of rent in the monthly amount of \$1,054.25 for the months of September 2018 and October 2018 to be just and I award the landlord compensation of \$2,108.50 as requested. It remains upon the tenant to recover his losses with respect to the occupant's failure to vacate the rental unit from the occupant in the appropriate forum.

I further award the landlord recovery of the \$100.00 filing fee paid for this application. I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the amount awarded to the landlord with this decision.

In keeping with my findings above, I provide the landlord with a Monetary Order to serve and enforce upon the tenant, calculated as follows:

Over-holding September and October 2018	\$2,108.50
Recovery of filing fee	100.00
Less: security deposit	<u>(475.00)</u>
Monetary Order for landlord	\$1,733.50

Conclusion

The landlord has been provided an Order of Possession effective two (2) days after service. The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$1,733.50 to serve and enforce upon the tenant.

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: November 01, 2018

Residential Tenancy Branch