



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, OPR, MNRL, FFL

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking an Order of Possession and a monetary order for unpaid rent or utilities; a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; and to recover the filing fee from the tenant for the cost of the application.

The landlord attended the hearing with Legal Counsel and gave affirmed testimony, however the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony, and no one for the tenant joined the call.

The landlord's Legal Counsel advised that the tenant was served with the Application for Dispute Resolution, notice of this hearing and all evidentiary material by registered mail on October 29, 2020. The landlord has provided a Canada Post tracking document for this hearing substantiating that information, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

All evidence of the landlord has been reviewed and is considered in this Decision.

Issues to be Decided

- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

The landlord testified that this tenancy began on August 20, 2020 and the landlord is not certain if the tenant still resides in the rental unit. Rent in the amount of \$800.00 is payable on the 20th day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$400.00, which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a basement suite, and the upper level of the home is also tenanted. No written tenancy agreement was signed by the parties.

The landlord further testified that the tenant paid rent for the first month of the tenancy, but has not paid any rent since, and is currently in arrears of rent the sum of \$2,400.00 for the months of September, October and November, 2020. Rent for December will be due on December 20, 2020.

On October 9, 2020 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) by personally handing it to the tenant, and a photograph of the tenant holding the Notice has been provided for this hearing. A copy of the Notice has also been provided, and it is dated October 9, 2020 but contains no effective date of vacancy or signature of the landlord. The landlord's name appears on the Notice in hand-writing, and Legal Counsel advised that it was an over-sight to miss the landlord's signature and expected date of vacancy, and the landlord testified that he has difficulty with the English language. The reason for issuing the Notice states that the tenant failed to pay rent in the amount of \$800.00 that was due on September 20, 2020 and unpaid utilities in the amount of \$800.00 following written demand on October 9, 2020.

The tenant has not served the landlord with an Application for Dispute Resolution disputing the Notice, and the landlord seeks an Order of Possession and a monetary order for the unpaid rent.

Analysis

Firstly, the *Residential Tenancy Act* specifies that a tenant who is served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities has 5 days to dispute the Notice or to pay the rent in full. If the tenant pays the rent in full within that 5 day period, the Notice is of no effect. If the tenant does not dispute the Notice or pay the rent in full within that 5 day period, the tenant is conclusively presumed to have accepted the end of the tenancy. I accept the undisputed testimony of the landlord that the tenant has not paid the overdue rent and has not served the landlord with an Application for Dispute

Resolution disputing the Notice, and I have no such application before me from the tenant.

The *Act* also states that in order to be effective a notice to end a tenancy given by a landlord must be signed and dated by the landlord who gives the Notice. It also states that incorrect effective dates contained in a notice to end a tenancy are corrected to the nearest date that complies with the law. In this case, a dispute by the tenant may be considered for the landlord's failure to sign the Notice, if the tenant had disputed it. However, since the tenant has not disputed the Notice, I find that the tenant is conclusively presumed to have accepted the end of the tenancy, and the landlord is entitled to an Order of Possession.

I also accept the undisputed testimony of the landlord that the Notice was personally handed to the tenant on October 9, 2020, and therefore the effective date of vacancy is changed to October 19, 2020. Since the effective date of vacancy has passed, I grant the Order of Possession effective on 2 days notice to the tenant.

I also find that the landlord has established that the tenant is in arrears of rent the sum of \$2,400.00 for the months of September, October and November, 2020.

The landlord has not led any evidence with respect to the application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and therefore I dismiss that portion of the application.

Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, the landlord's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed.

I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenant.

I further grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,500.00.

This order is final and binding and may be enforced.

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 14, 2020

Residential Tenancy Branch