



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL-S, FF

Introduction

The Landlord applies for an order of possession pursuant to s. 55 of the *Residential Tenancy Act* (the “*Act*”) after issuing a 10-Day Notice to End Tenancy on October 5, 2021 (the “10-Day Notice”). The Landlord also seeks an order for unpaid rent and an order for return of their filing fee.

C.L. appeared on her own behalf as Landlord. The Tenant did not appear, nor did someone appear on their behalf. As the Tenant failed to attend, the hearing was conducted without participation from the Tenant pursuant to Rule 7.3 of the Rules of Procedure.

The Landlord affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The Landlord confirmed that she was not recording the hearing.

The Landlord indicates having served the 10-Day Notice by posting it to the Tenant’s door on October 5, 2021. I find that the 10-Day Notice was served in accordance with s. 88 of the *Act*. Pursuant to s. 90, I deem the Tenant to have been served with the 10-Day Notice on October 8, 2021.

The Landlord indicated that she served the Notice of Dispute Resolution and her evidence by way of registered mail sent November 3, 2021. The Landlord provided a tracking number as proof of service. I find that the Landlord has served the application package in accordance with s. 89 of the *Act*. Pursuant to s. 90, I deem the Tenant to have been served with the application package on November 8, 2021.

Preliminary Issue – Landlord’s Claim for an order of possession

The Landlord indicated that the Tenant has vacated the rental unit without notice to the Landlord. The Landlord discovered the rental unit was vacant on November 15, 2021. As the Tenant is no longer residing within the rental unit, the Landlord’s claim for an order of possession is moot. Pursuant to s. 68, I find that the tenancy ended on November 15, 2021, the day upon which the Landlord discovered the rental unit was vacant.

Preliminary Issue – Style of Cause

The Landlord advised that she was unaware of the names of all the occupants within the residential unit. G.S. is named in the style of cause and the Landlord also includes the following: “Name wasn’t provided from previous landlord Inherited the tenant”. As Policy Guideline #43 makes clear, if an order from the Residential Tenancy Branch is to be enforced, it must have the correct legal name of the respondents. On this basis and pursuant to Rule 4.2 of the Rules of Procedure, I amend the style of cause to leave G.S. as the sole named respondent.

Issue(s) to be Decided

- 1) Is the Landlord entitled to a monetary award for unpaid rent and, if so, in what amount?
- 2) Is the Landlord entitled to return of their filing fee?

Background and Evidence

The parties were 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 issue in dispute will be referenced in this decision.

The Landlord advises that she recently purchased the residential property, which comprises of the subject rental unit on the lower level. The Landlord resides on the upper level of the residential property. The Landlord took possession of the residential property on September 7, 2021.

When the Landlord took possession of the residential property, the Tenant was residing within the rental unit. The Landlord advised that she understood the terms of the

tenancy to be that the Tenant was to pay \$1,000.00 on the first day of each month and 10% of the hydro bill for the residential property. She indicated that there was an adjustment to the purchase price such that she holds a security deposit of \$500.00 in trust for the Tenant.

The Landlord was uncertain on whether there was a written tenancy agreement as none was provided to her when she purchased the residential property. She indicated that she attempted to sign a new tenancy agreement with the Tenant after taking possession of the residential property but that the Tenant refused to do so. The Landlord indicates that she became aware of the terms of the tenancy through the conveyancing process. However, these terms were never confirmed by the Landlord with the Tenant. There was an adjustment to the purchase price accounting for the partial rent for the month of September 2021, which was presumably accepted in full by the previous owner.

The Landlord advised that the Tenant failed to pay rent on October 1, 2021 and that she issued the 10-Day Notice on October 5, 2021 on this basis. The Landlord further indicates that the Tenant failed to pay rent on November 1, 2021. The Landlord is seeking the rent for these two months.

The Landlord also seeks the Tenant's 10% contribution to the utilities. The Landlord failed to provide a copy of the hydro bill but indicated that it was \$289.09 for the relevant period. The Landlord seeks \$28.91 from the Tenant for utilities. No written demand was put into evidence by the Landlord.

As mentioned previously, the Landlord discovered the Landlord had vacated the property on November 15, 2021.

Analysis

The Landlord seeks a monetary award for unpaid rent and utilities as well as the return of her filing fee.

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim. Section 26 of the *Act* sets out that a tenant must pay rent in accordance with the tenancy agreement unless they are authorized by the *Act* to deduct all or a portion of their rent.

In the present circumstances, the Landlord came into the tenancy after purchasing the residential property on September 7, 2021. Upon taking possession, the Landlord attempted to sign a new tenancy agreement and obtain information from the Tenant with respect to the tenancy. However, the Tenant refused to cooperate and later refused to pay rent until vacating the rental unit without notice to the Landlord.

I accept that the Landlord's understanding of the terms of the tenancy are imperfect due in large part by the actions of the Tenant and her not receiving a copy of a tenancy agreement from the previous owner. However, I accept the Landlord's evidence that she received the Tenant's security deposit of \$500.00 from the previous owner, which came in the form of an adjustment to the purchase price of the residential property. I further accept that rent was \$1,000.00, payable on the first day of each month.

I am, however, uncertain on whether the Tenant was obliged to pay utilities as described by the Landlord. No copies of the conveyancing documents in which the Landlord indicates she learnt the terms of the tenancy were put into evidence. Even if I were to accept that the Tenant was to pay 10% of the utilities as per the tenancy agreement, the Landlord has failed to include a copy of the utility bill and she failed to provide a written demand to the Tenant for payment of the utilities as contemplated by s. 46(6) of the *Act*. Accordingly, I dismiss the Landlord's claim for unpaid utilities as the Landlord's evidence is insufficient to justify this portion of the application.

I accept that the Tenant failed to pay rent of \$1,000.00 for the months of October and November and that this breach of the terms of the tenancy warrant a monetary award. Accordingly, the Tenant shall have an order for unpaid rent for October and November.

As the Landlord was largely successful in their application, they are entitled to their filing fee of \$100.00 from the Tenant in accordance with s. 72(1).

In partial satisfaction of the Tenant's debt, I exercise my discretion under s. 72(2) and order that the Landlord may retain the security deposit of \$500.00 she currently holds in trust from the Tenant.

Conclusion

The Landlord learnt that the Tenant vacated the rental unit on November 15, 2021. Accordingly, the issue of an order of possession is no longer relevant and I order that the tenancy ended on November 15, 2021 in accordance with s. 68(2) of the *Act*.

I grant the Landlord a monetary order taking into account the following:

Item	Amount
Unpaid Rent	\$2,000.00
Landlord's filing fee pursuant to s. 72(1)	\$100.00
Less the security deposit to be held by the Landlord	-\$500.00
TOTAL	\$1,600.00

Pursuant to s. 67 of the *Act*, I order that the Tenant pay **\$1,600.00** to the Landlord.

It is the Landlord's obligation to serve the order on the Tenant. If the Tenant does not comply with the monetary portion of this order, it may be filed by the Landlord with the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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 30, 2021

Residential Tenancy Branch