



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNRL-S, FFL, CNR-MT, MNDCT, AAT, LRE, LAT, OLC

Introduction

This hearing was scheduled for 11:00 a.m. on this date, via teleconference call, to deal with cross applications. The tenants applied for cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent and an extension of time to dispute the 10 Day Notice; among several other remedies. The landlord applied for an Order of Possession based on a One Month Notice to End Tenancy for Cause ("1 Month Notice") and a Monetary Order for unpaid and/or loss of rent; and, authorization to retain the tenant's security deposit and pet damage deposit.

The landlord appeared at the hearing; however, there was no appearance on part of the tenants despite leaving the teleconference call open approximately 15 minutes.

The landlord testified that she was not served with the tenant's Application for Dispute Resolution. The tenants did not submit any proof of service of their Application for Dispute Resolution and did not appear at the hearing to prove they served their Application for Dispute Resolution to the landlord. Accordingly, I dismissed the tenant's Application for Dispute Resolution due to lack of service. Having found the tenancy is over pursuant to the landlord's Application for Dispute Resolution, for reasons provided later in this decision, I dismiss all of the tenant's remedies without leave as the tenant's requests are moot due to the end of the tenancy, except for the tenant's monetary claim which is dismissed with leave.

As for service of the landlord's Application for Dispute Resolution upon the tenants, the landlord testified that the proceeding packages were sent to each tenant via registered mail on December 9, 2021. The landlord provided two registered mail receipts, including tracking numbers, as proof of service. The landlord testified that the tenants are still residing at the rental unit but they did not pick up their registered mail and the packages are unclaimed. Pursuant to section 90 of the Act, a person is deemed to be

in receipt of documents five days after mailing, even if the person refuses to accept or pick up their mail. In keeping with section 90, I deemed the tenants served on December 14, 2021 and I continued to hear from the landlord without the tenant's present.

Issue(s) to be Decided

1. Has the tenancy ended and is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to a Monetary Order for unpaid and/or loss of rent?
3. Is the landlord authorized to retain the tenant's security deposit and pet damage deposit?
4. Award of the filing fee.

Background and Evidence

Pursuant to a written tenancy agreement, the tenancy started on May 23, 2021. The tenants are required to pay rent of \$1400.00 on the first day of every month. The tenants paid a security deposit of \$700.00 and a pet damage deposit of \$700.00.

The landlord testified that the tenants paid rent late almost every month and many months were short.

On August 6, 2021 the landlord issued the subject One Month Notice to End Tenancy for Cause ("1 Month Notice") to the tenants. The 1 Month Notice has a stated effective date of September 7, 2021 and indicates the reason for ending the tenancy is: repeated late payment of rent, among other things. In the Details of Cause on the 1 Month Notice the landlord stated that rent was late for the months of June, July, and August.

The landlord testified that the 1 Month Notice was sent to the tenants via email and posted to the rental unit door by the building manager on August 6, 2021.

The tenants did not file to dispute the 1 Month Notice within 10 days of it being served. I note that in filing their Application for Dispute Resolution, on August 27, 2021, the tenants indicated they received an eviction notice that was posted to their door on August 6, 2021 but they indicated they received a 10 Day Notice on that date. The tenants had requested an extension of time to dispute the notice but did not provide a reason for filing late.

The landlord testified and provided an image of the e-transfer payments received from the tenants. The rent for June was paid on June 7, 2021; the rent for July 2021 was paid by an instalment on June 29, 2021 and the final installment on July 3, 2021; and, the rent for August 2021 was partially paid by way of a payment of \$1000.00 on August 15, 2021.

The landlord testified that while awaiting this hearing, the tenants did pay rent for September 2021 late and it was short by \$100.00; the rent for October 2021 was paid late and short by \$150.00; and the rent for December 2021 was paid late and short by \$460.00; however, after filing the landlord did receive a payment of \$500.00.

The landlord seeks to obtain an Order of Possession effective as soon as possible as rent for January 2022 has not been paid and the tenants continue to occupy the rental unit. The landlord seeks to recover the rental shortfall for the months of August 2021 through December 2021 plus recovery of loss of rent for January 2022. The landlord stated she would be satisfied in retaining the tenant's deposits in satisfaction of the rental losses she has suffered up until the period of January 15, 2022.

Documentary evidence provided by the landlord included a copy of: the written tenancy agreement; the 1 Month Notice; the email used to send the 1 Month Notice to the tenants; an email from the tenant sent in September 2021 indicating they would move out; an image of the e-transfer payments received from the tenants; and, the registered mail receipts for service of the landlord's proceeding package to the tenants.

Analysis

Section 55(2) of the Act provides circumstances where a landlord may apply for an Order of Possession, including:

(b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;

The landlord provided unopposed evidence that a One Month Notice to End Tenancy for Cause was issued on August 6, 2021 and served by way of email and posting to the door. Under section 90 of the Act, a document sent by email or posted to the door of the rental unit is deemed received three days later in the absence of other evidence as to when it was actually received. Pursuant to section 90, I find the tenants deemed served with the 1 Month Notice on August 9, 2021.

Upon review of the 1 Month Notice, I find it is in the approved form and is duly completed. The effective date on the 1 Month Notice is incorrect and it should read September 30, 2021. An incorrect effective date does not automatically invalidate a notice to end tenancy. Rather, the effective date automatically changes to comply, pursuant to section 53 of the Act. Therefore, I am satisfied the landlord issued a notice to end tenancy that complies with the form and content requirements of the Act.

Under section 47(5) a tenant in receipt of a 1 Month Notice has 10 days to file an Application for Dispute Resolution to dispute the notice. The tenants did not dispute the notice within 10 days. The tenants did file an Application for Dispute Resolution on August 27, 2021 but that is more than 10 days after receiving the 1 Month Notice; their application indicates they are disputing a 10 Day Notice to End Tenancy for Unpaid Rent; and, their Application for Dispute Resolution was not served upon the landlord. As such, I consider the 1 Month Notice to be undisputed.

Where a tenant fails to dispute the 1 Month Notice within time, the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit by the effective date, as provided under section 47(5) of the Act. I heard the tenants have not yet vacated the rental unit.

In light of all of the above, I find the landlord is entitled to an Order of Possession under section 55(2)(b) of the Act and I provide the landlord an Order of Possession effective two (2) days after service.

As for the landlord's monetary claim, the landlord provided unopposed evidence as to the amount of the monthly rent and the payments received from the tenants. Upon review of these documents and the landlord's testimony, I find the landlord entitled to recovery of the rental shortfall of \$400.00 for August 2021 and the shortfall of \$100.00 for the month of September 2021. The tenancy ended September 30, 2021 but the tenants continued to occupy the rental unit. The tenants made partial payments for their continued use and occupancy of the unit after the tenancy ended which I take into consideration. I find the landlord has suffered a loss of rent in the amount of \$150.00 for the month of October 2021 and \$460.00 for the month of December 2021. I further award the landlord loss of rent for the period of January 1 – 15, 2022 considering the date of this decision. Finally, I also award the landlord recovery of the \$100.00 filing fee she paid for her application.

Based on the foregoing, I find the landlord entitled to recovery from the tenants in the sum calculated as follows:

Unpaid rent for August 2021	\$ 400.00
Unpaid rent for September 2021	100.00
Loss of rent for October 2021	150.00
Loss of rent for December 2021	460.00
Loss of rent for January 1 – 15, 2022	700.00
Less: payment received after filing	(500.00)
Plus: filing fee	<u>100.00</u>
Total recovery due to landlord	\$1410.00

The landlord requested and I authorize the landlord to retain the tenant's security deposit and pet damage deposit, totalling \$1400.00, in satisfaction of the amounts awarded above.

Should the landlord suffer additional losses the landlord may pursue the tenants by filing another Application for Dispute Resolution.

Conclusion

The tenancy has ended for cause and the landlord is provided an Order of Possession effective two (2) days after service upon the tenants.

The landlord is authorized to retain the tenant's security deposit and pet damage deposit, totalling \$1400.00, in satisfaction of the amounts awarded to the landlord by way of this decision.

The tenant's application is dismissed without leave, with the exception of their monetary claim which is dismissed with leave.

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: January 07, 2022

Residential Tenancy Branch