



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, OPU, FFL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a tenancy. In this application for dispute resolution, the Landlord applied:

- for an order of possession, having served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated November 9, 2021 (the 10 Day Notice);
- to recover money for unpaid rent, noting that the Landlord holds the Tenants' security deposit or pet deposit; and
- to recover the filing fee.

The hearing teleconference commenced on time at 9:30 a.m. and was attended by the Landlord; the Tenants did not attend, though the teleconference line remained open for the duration of the 33-minute hearing. The Landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; he was also made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The Landlord testified he served the Notice of Dispute Resolution Proceeding and his evidence on the Tenants on November 23, 2021 by registered mail, and provided a Canada Post receipt with tracking numbers. Based on the Landlord's evidence and affirmed testimony, and having checked the two tracking numbers, I find the Landlord served the Tenants in accordance with section 89 of the Act.

In accordance with section 90 of the Act, I find the Landlord's documents deemed received by the Tenants on November 28, 2021.

Issues to be Decided

- 1) Is the Landlord entitled to an order of possession?
- 2) Is the Landlord entitled to recover money owed for unpaid rent?
- 3) Is the Landlord entitled to the filing fee?

Background and Evidence

The Landlord provided the following particulars regarding the tenancy. It began September 1, 2021; rent is \$2,350.00 a month, due on the first of the month; and the Tenants paid a security deposit of \$2,350.00, which the Landlord still holds.

A copy of the tenancy agreement was submitted as evidence. The signed addendum of tenancy agreement states that the Tenants must pay 60 percent of the utility bills to the Landlord. The Landlord testified that as this was somewhat onerous due to the constant variability of the bill amounts, the parties reached a verbal mutual agreement that the Tenants would pay the Landlord \$200.00 per month for utilities.

The Landlord testified they served the 10 Day Notice on the Tenants on November 9, 2021 by attaching a copy to the door and placing a copy in the mailbox. A copy of the 10 Day Notice was submitted as evidence.

The 10 Day Notice is signed and dated by the Landlord, gives the address of the rental unit, states an effective date, states the reason for ending the tenancy, and is in the approved form. The 10 Day Notice indicates the tenancy is ending because the Tenants failed to pay rent in the amount of \$2,350.00 due November 1, 2021, and failed to pay utilities in the amount of \$200.00 following a written demand on November 1, 2021.

The Landlord testified that the Tenants have made no rent or utility payments since being served the 10 Day Notice.

The Landlord submitted as evidence a copy of a bank statement showing the Tenants' November 2021 rent and utilities payment of \$2,550.00 returned unpaid, copies of utility bills, and a copy of a demand letter sent to the Tenants. The demand letter is dated November 16, 2021 and states that the Tenants have an outstanding balance owing of \$2,550.00 for rent and utilities.

Analysis

Section 26 of the Act provides that a tenant must pay the rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations, or the Tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent.

Pursuant to section 46 (1) of the Act, the landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. A notice under this section must comply with the form and content provisions of section 52.

Sections 46 (4) and (5) of the Act state:

- (4) Within 5 days after receiving a notice under this section, the tenant may
 - (a) pay the overdue rent, in which case the notice has no effect, or
 - (b) dispute the notice by making an application for dispute resolution.
- (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant
 - (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
 - (b) must vacate the rental unit to which the notice relates by that date.

Based on the Landlord's affirmed undisputed testimony, I find the Landlord served the 10 Day Notice in accordance with section 88 of the Act, and deem it received by the Tenants on November 12, 2021. I find that the 10 Day Notice meets the form and content requirements of section 52.

I find that the Tenants did not file an application for dispute resolution within 5 days of November 12, 2021, the timeline granted under section 47(4) of the Act. Accordingly, I find that the Tenants are conclusively presumed under section 47(5) to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, November 22, 2021, and must vacate the rental unit. Section 53 of the Act states that incorrect effective dates are automatically changed.

Therefore, I find the Landlord is entitled to an order of possession.

I accept the Landlord's evidence and undisputed affirmed testimony that the Tenants have not paid rent for November and December 2021 and January 2022.

There is insufficient evidence before me to demonstrate that the Tenants had a legal right to withhold payment of rent for November 2021 to January 2022.

Based on the Landlord's evidence and testimony, I find the Tenants owe the Landlord unpaid rent as follows:

Month	Monthly rent	Partial payment	Monthly outstanding
November 2021	\$2,350.00	\$0.00	\$2,350.00
December 2021	\$2,350.00	\$0.00	\$2,350.00
January 2022	\$2,350.00	\$0.00	\$2,350.00
Total outstanding rent			\$7,050.00

Section 46 (6) of the Act states:

(6) If

(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

I accept the Landlord's undisputed affirmed testimony that he and the Tenants came to a verbal agreement that the Tenants would pay the Landlord \$200.00 a month for utilities.

I accept the Landlord's testimony that the Tenants have not paid utilities for November and December 2021 and January 2022. I accept the Landlord's testimony and evidence that on November 9, 2021 the Landlord served the Tenants with the 10 Day Notice for unpaid rent and utilities, and that on November 16, 2020, the Landlord provided the Tenants with a demand letter for unpaid rent and utilities owing since November 1, 2021.

As noted above, section 46 (6) requires a Landlord to first give tenants a written demand for payment of outstanding utilities, then, if the utility charges remain unpaid for

more than 30 days, the landlord may treat the unpaid utility charges as rent, and issue a 10 Day Notice. As the Landlord prematurely included the utility charges on the 10 Day Notice, before issuing the demand letter and allowing 30 days without receiving payment to elapse, I find the Landlord is not entitled to recover the utility charges via this application for unpaid rent.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord is successful in the majority of his application, I order the Tenants to pay the \$100.00 filing fee the Landlord paid to apply for dispute resolution.

In accordance with section 72 of the Act, I allow the Landlord to retain \$2,350.00 of the Tenants' security deposit in partial satisfaction of the amount owed to the Landlord, as follows:

Total outstanding rent	\$7,050.00
Filing fee	\$100.00
Less Tenants' security deposit	-\$2,350.00
Monetary award	\$4,800.00

For their knowledge, I bring Schedule section 2(1)(a) of the Residential Tenancy Regulation to the awareness of the parties, which states that the security deposit and pet damage deposit must each not exceed one half of the monthly rent payable for the residential property.

Conclusion

The Landlord's application is granted.

The Landlord is granted an order of possession which will be effective two days after it is served on the Tenants.

The Landlord is granted a monetary order in the amount of \$4,800.00.

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: January 31, 2022

Residential Tenancy Branch