



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPR, OPC, MNRL-S, MNDCL-S, FFL**
CNR, LRE, OLC

Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

This application dealt with applications filed by both the landlord and the tenant pursuant the Residential Tenancy Act.

The landlord applied for:

- An order of possession for unpaid rent pursuant to sections 46 and 55;
- An order of possession for cause pursuant to sections 47 and 55;
- A monetary order for unpaid rent and authorization to withhold a security deposit pursuant to sections 67 and 38;
- An order to be compensated for a monetary loss or other money owed and authorization to withhold a security deposit pursuant to sections 67 and 38; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenants applied for:

- An order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities pursuant to sections 46 and 55;
- An order suspending the landlord's right to enter the rental unit pursuant to section 70; and
- An order for the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62.

Neither tenant attended the hearing although I left the teleconference connection open throughout the hearing which commenced at 11:00 a.m. and ended at 11:15 a.m. The landlord attended the hearing together with a witness, MM. The witness testified that she served each tenant with their own copy of the Notice of Dispute Resolution

Proceedings package via registered mail on October 21, 2022. The packages were sent to the residential addresses of the tenants and the tracking numbers are recorded on the cover page of this decision. The tenants are deemed sufficiently served with the Notice of Dispute Resolution Proceedings five days after being sent via registered mail, on October 26, 2022 pursuant to sections 89 and 90 of the Act.

Issue(s) to be Decided

Should the landlord's notices to end tenancy be upheld or cancelled?

Is the landlord entitled to a monetary order for unpaid rent?

Can the landlord retain the tenants' security deposit?

Can the landlord recover the filing fee?

Background and Evidence

A copy of the tenancy agreement was provided as evidence. The tenancy began on June 15, 2021 with rent set at \$2,200.00 per month, payable on the first day of each month. A security deposit of \$1,100.00 was collected from the tenant which the landlord continues to hold.

The landlord gave the following undisputed testimony. The tenants failed to pay rent for the month of July and on July 4th, the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities. The landlord is not proceeding with this notice, as there are defects with it, namely that the rental unit is not listed on the document.

The witness MM testified that she served the tenant with 2 subsequent notices to end tenancy on August 29, 2022 by posting them to the door of the rental unit. The first notice is a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities, which indicates the tenants failed to pay rent in the amount of \$4,400.00 that was due on August 1, 2022. The landlord testified that the tenant failed to pay rent for the months of July and August, 2022, the sum of \$4,400.00. The landlord testified that the tenants did not pay the arrears in rent within 5 days of being served with the notice and have not paid rent for September, October or November. The landlord seeks to recover rent from July 1, 2022 to the end of November 2022. The tenants have not vacated the rental unit since being served with the two notices to end tenancy.

The second notice to end tenancy was issued for cause. The reason for ending the tenancy was for repeatedly late paying rent. The landlord provided evidence by means of e-transfer notices from his bank indicating rent was late 3 times: November 2, 2021, December 3, 2021 and June 2, 2022.

The tenants did not attend the hearing to present any evidence or testimony to dispute the landlord's evidence.

Analysis

The tenants did not attend this hearing. I dismiss their application without leave to reapply pursuant to rule 7.3 of the Residential Tenancy Branch Rules of Procedure.

Based on the undisputed evidence of the landlord, I am satisfied the tenants were served with both the 10 Day Notice to End Tenancy for Unpaid Rent/Utilities and the 1 Month Notice to End Tenancy for Cause on September 1, 2022, three days after August 29th, the day a copy of each was posted to their door in accordance with sections 88 and 90 of the Act.

Section 46 of the Act states:

- (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.

The tenants failed to pay the rent identified as owing in the 10 Day Notice in full within five days of receiving that Notice. Based on the landlord's testimony and the Notice before me, I find that the tenants were served with an effective Notice and did not file an application to dispute it within the 5 days. Therefore, the tenants are conclusively presumed to have accepted the tenancy ended on September 11, 2022, the earliest effective date of the Notice, once corrected under section 53 of the Act, and must move out of the unit. As this has not occurred, I find that the landlord is entitled to an Order of Possession effective two (2) days after service, pursuant to section 55 of the Act.

Likewise, I find the tenants were late in paying rent at least 3 times during the tenancy and I uphold the landlord's 1 Month Notice to End Tenancy for Cause. The effective date on that notice has also passed and the landlord is entitled to the Order of Possession effective 2 days after service. The landlord is granted a single Order of Possession for the tenants' breaches of the Act.

I am satisfied the tenants were obligated to pay rent in the amount of \$2,200.00 per month and failed to pay rent for the months of July, August, September, October, and November. Section 26 of the *Act* is clear:

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

I find the tenants did not have a right to deduct any portion of their rent and that they failed to pay their full rent in the amount of [\$2,200.00 x 5 (months) = \$11,000.00]. The landlord is entitled to a monetary order in the amount of \$11,000.00.

The landlord's application was successful and the filing fee of \$100.00 will be recovered. The landlord continues to hold the tenants' security deposit and in accordance with the offsetting provisions of section 72, the landlord may retain the tenants' full security deposit in partial satisfaction of the monetary order.

Item	Amount
Unpaid rent from July 1, 2022 to November 30, 2022	\$11,000.00
Filing fee	\$100.00
Less security deposit	(1,100.00)
Total	\$10,000.00

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**.

I award the landlord a monetary order in the amount of \$10,000.00.

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: November 30, 2022

Residential Tenancy Branch