



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL-S, FFL

Introduction

The Landlord seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- an order of possession pursuant to s. 55 after issuing a 10-Day Notice to End Tenancy signed on June 27, 2022 (the “10-Day Notice”);
- a monetary order pursuant to ss. 38 and 67 for unpaid rent by claiming against the security deposit; and
- return of her filing fee pursuant to s. 72.

J.H. appeared as the Landlord. C.C. and M.S. appeared as the Tenants.

The parties 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. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlord advised that the Tenants were served with her application and evidence. The Tenants acknowledge receipt of the Landlord’s application materials without objection. Based on the Tenant’s acknowledged receipt without objection, I find that pursuant to s. 71(2) of the *Act* that the Tenants were sufficiently served with the Landlord’s application materials.

The Tenants confirm not having served evidence in response.

Issue to be Decided

- 1) Is the Landlord entitled to an order of possession?
- 2) Is the Landlord entitled to an order for unpaid rent?

3) Is the Landlord entitled to a return of her 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 issues in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenant moved into the rental unit on July 13, 2021.
- Rent of \$900.00 is due on the first day of each month.
- A security deposit of \$450.00 and a pet damage deposit of \$200.00 was paid by the Tenant to the Landlord.

The parties further confirmed that at the outset of the tenancy there was no written tenancy agreement but that this was rectified when a written tenancy agreement was signed by the parties in October 2022. I have been provided with a copy of the written tenancy agreement signed in October 2022.

The Landlord testified that the 10-Day Notice had been served on the Tenants, which the Tenants acknowledge receiving. The copy of the 10-Day Notice provided indicates that the Tenants owed \$200.00 on July 1, 2022.

The Landlord testified that the Tenants had paid \$700.00 in June 2022 and that the balance of \$200.00 was owed when the 10-Day Notice was served. I am further advised by the Landlord that the Tenants made four monthly payments of \$50.00 beginning in August 2022 such that the arrears have been paid. The Landlord confirmed that no rent is currently owed by the Tenants but argued the Tenant ought to have first made a \$50.00 payment in July 2022.

The Landlord further testified that the Tenants are frequently late in paying their rent. I have been provided with a One-Month Notice to End Tenancy with respect to repeated late rent payments. However, the issue of repeated late rent payments was not specifically pled within the Landlord's application.

The Tenants confirm that rent for June 2022 was partially paid as alleged and that they paid the arrears as per their agreement with the Landlord that the arrears be covered in

monthly installments as outlined by the Landlord. The Tenant says the agreement was made in July 2022 and it was her understanding it took effect the following month.

The Landlord did not characterize the payment of the arrears as an agreement, though acknowledges that she was the one who put forward the proposal to the Tenants. She argued that she had little other choice to collect the arrears other than to offer the payment plan. I am advised by the Landlord that the arrangement for the payment of the arrears was orally communicated.

The Tenants continue to reside within the rental unit.

Analysis

The Landlord seeks an order of possession and an order for unpaid rent.

Pursuant to s. 46(1) of the *Act*, where a tenant fails to pay rent when it is due, a landlord may elect to end the tenancy by issuing a notice to end tenancy that is effective no sooner than 10-days after it is received by the tenant. Pursuant to s. 46(4) of the *Act*, a tenant has 5-days from received a 10-day notice to end tenancy to either pay the overdue rent or file an application to dispute the notice. If a tenant files to dispute the notice, the burden of proving it was issued in compliance with s. 46 of the *Act* rests with the respondent landlord.

Pursuant to s. 46(4) of the *Act* a tenant has 5 days after receiving a notice to end tenancy for unpaid rent to pay the arrears or dispute the notice. In this instance, there is no evidence to suggest that the Tenants filed an application disputing the 10-Day Notice. However, the parties entered an arrangement by which the Tenants paid the arrears in four monthly installments of \$50.00. It appears more likely than not that the arrangement took form in July 2022 based upon the testimony of the parties.

The issue here is how to characterize the payment plan of July 2022. It is inappropriate, in my view, to permit a landlord to enforce on a notice to end tenancy for unpaid rent after coming to an agreement to settle the arrears. I note that the Landlord in this instance filed her application with the Residential Tenancy Branch on July 29, 2022. Given the timing, it appears more likely than not that the Landlord filed her application after offering the payment plan to the Tenants.

The Landlord argued that the arrangement was not one of an agreement to settle the issue of unpaid rent but was an attempt to collect the arrears by the means available to her. The Landlord says she had no choice but to make the offer. That is false. The Landlord could have pursued the claim before the Residential Tenancy Branch. Rather than doing so, she offered a payment plan to the Tenants. The Tenants accepted and paid off their arrears. There is an issue with when the first payment was due, though I view this being due to the informal nature upon which the parties had operated, including an oral tenancy agreement despite the requirement it be written as per s. 13(1) of the *Act*. The precise terms of the payment plan are not, in my view, relevant here.

Given the timing of the payment plan offer, I find that it would be inappropriate for the Landlord to then go and enforce on the 10-Day Notice. I find that the parties settled the dispute such that the Landlord agreed to forego enforcement of the 10-Day Notice upon the condition the Tenants pay the arrears along the payment plan. I find that the Landlord is not entitled to an order of possession as the 10-Day Notice is of no force or effect.

By the Landlord's own admission, there are no arrears in unpaid rent as of the date of the hearing. This claim is also dismissed.

Conclusion

The Landlord's application for an order of possession pursuant to s. 55 of the *Act* and the 10-Day Notice is dismissed without leave to reapply.

The Landlord's claim for unpaid rent is also dismissed without leave to reapply.

The Landlord was unsuccessful in her application. I find she is not entitled to the return of her filing fee. Her claim for the filing fee under s. 72 of the *Act* is dismissed without leave to reapply.

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 19, 2022

Residential Tenancy Branch