



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNRL, OPR

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on February 20, 2018 (the “Application”). The Landlord sought an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 8, 2018 (the “10 Day Notice”). The Landlord also sought a Monetary Order for unpaid rent and reimbursement for the filing fee.

The Landlord and Co-landlord appeared at the hearing and provided affirmed testimony. The hearing process was explained to the Landlord and he did not have any questions about the proceedings. The Tenant did not appear at the hearing.

I addressed service of the hearing package. The Landlord said he served the hearing package on the Tenant in person on February 20, 2018. The Co-landlord said she observed the Landlord give the Tenant the Notice of Dispute and proceeding package on February 20, 2018. Based on the oral evidence of the Landlord and Co-landlord, I was satisfied the hearing package was served on the Tenant in person on February 20, 2018 and therefore was served in accordance with section 59(3) and section 89(1)(a) of the *Residential Tenancy Act* (the “Act”). Given this, I proceeded with the hearing in the absence of the Tenant.

I also addressed service of the Landlord's evidence. The Landlord said he served a copy of the 10 Day Notice and Proof of Service Notice to End Tenancy form (the "Proof of Service") on the Tenant with the hearing package. The Co-landlord said she observed the Landlord give the Tenant the 10 Day Notice and Proof of Service on February 20, 2018. Based on the oral evidence of the Landlord and Co-landlord, I found this evidence was served on the Tenant in person on February 20, 2018 and therefore was served in accordance with section 88(a) of the *Act* and rule 3.14 of the Rules of Procedure (the "Rules"). I admitted this evidence.

The Landlord had also submitted a Monetary Order Worksheet and letter from the Co-landlord dated February 20, 2018 as evidence. The Landlord said he did not serve the Monetary Order Worksheet or letter from the Co-landlord on the Tenant. Rule 3.14 of the Rules states that evidence "that is intended to be relied on at the hearing must be received by the respondent...not less than 14 days before the hearing". Rule 3.17 of the Rules states that "evidence not provided to the other party...in accordance with the *Act* or Rules", including rule 3.14:

...may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence.

The arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice.

The Monetary Order Worksheet is dated February 21, 2018 and the letter from the Co-landlord is dated February 20, 2018. I do not consider this to be new evidence that could not have been served on the Tenant prior to the hearing. Given that the Tenant was not served with the Monetary Order Worksheet or letter from the Co-landlord, and because the Tenant was not at the hearing to address admissibility of these documents, I excluded them from evidence. These documents will not be referred to in my decision.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession for unpaid rent?
2. Is the Landlord entitled to a Monetary Order for unpaid rent?
3. Is the Landlord entitled to recover the filing fee for the Application?

Background and Evidence

The admissible evidence submitted by the Landlord includes the 10 Day Notice and Proof of Service. Both the Landlord and Co-landlord provided affirmed testimony at the hearing. The Landlord was given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions.

The Tenant did not submit any evidence prior to the hearing.

I have considered the admissible documentary evidence submitted and all oral evidence provided by the Landlord and Co-landlord. I will only refer to the evidence I find relevant in this decision.

The Landlord testified that he entered into an oral tenancy agreement with the Tenant in relation to the rental unit. He said the tenancy started on February 1, 2017 and is a month-to-month tenancy. He testified that the monthly rent is \$430.00 and due on the first day of each month. He said the security deposit was \$200.00 but the Tenant never paid it. He said the tenancy agreement does not include any terms beyond the standard terms set out in the *Residential Tenancy Regulation*.

The Landlord did testify about a written agreement between him and the Tenant from February 1, 2017. He stated the agreement says that the Landlord had received

\$100.00 to hold a room for the Tenant and that the Tenant would pay \$330.00 the following Thursday or Friday. He said the agreement states that the Tenant would pay \$200.00 for the deposit on Monday, February 6. The Landlord said the Tenant signed this agreement and wrote, "I agree with this arrangement". The Landlord also testified that he had a note written by the Tenant on February 4, 2017 saying that the Tenant would pay the \$200.00 damage deposit on February 9, 2017.

The Landlord testified that the Tenant had failed to pay \$160.00 of January rent and the full \$430.00 of February rent as of February 1, 2018. The Landlord said he issued the 10 Day Notice for this unpaid rent.

The Landlord testified that he posted both pages of the 10 Day Notice on the rental unit door on February 9, 2018. The Landlord said the Tenant was in the residence when the 10 Day Notice was posted and that the Tenant took it right away. The Co-landlord testified that she observed the Landlord post the 10 Day Notice on the door. She said the Tenant opened the door and took the document. I also note the Proof of Service indicates the Landlord served the Tenant with the 10 Day Notice on February 9, 2018 by attaching it to the Tenant's door. The Proof of Service is signed by the Landlord and witnessed and signed by the Co-landlord.

The Landlord testified that the Tenant did not pay or dispute the 10 Day Notice by February 19, 2018. The Landlord said the Tenant did not have a right to withhold rent under the *Act*.

I note the following from a review of the 10 Day Notice. It indicates that the Tenant has failed to pay rent in the amount of \$590.00 that was due on February 1, 2018. It is addressed to the Tenant. It sets out the rental unit address. It provides the Landlord's name and address. It advises that the Tenant must move out of the rental unit by February 22, 2018. It is signed by the Landlord and dated February 8, 2018.

The Landlord testified that the Tenant has not paid any rent since being served with the 10 Day Notice. The Landlord said that, as of the hearing date, the Tenant owed \$160.00 of January rent and \$430.00 of rent for each of February, March and April. The Landlord confirmed the Tenant owed \$1,450.00 in rent as of the date of the hearing. The Landlord confirmed he wanted to amend the Application to request a Monetary Order in the amount of \$1,450.00 to reflect the full amount owing.

Analysis

I accept the undisputed testimony of the Landlord that he entered into an oral tenancy agreement with the Tenant in relation to the rental unit and that the tenancy began February 1, 2017. I accept the undisputed evidence of the Landlord that the Tenant agreed to pay \$430.00 monthly on the first of each month. Therefore, I find the Tenant was obligated to pay the Landlord \$430.00 for January rent by January 1, 2018 and \$430.00 for February rent by February 1, 2018.

Section 26(1) of the *Act* states that a “tenant must pay rent when it is due under the tenancy agreement...unless the tenant has a right under this Act to deduct all or a portion of the rent”.

I accept the undisputed evidence of the Landlord that the Tenant owed \$590.00 in outstanding rent for January and February as of the date of the 10 Day Notice. Further, I accept the undisputed evidence of the Landlord that the Tenant did not have a right to withhold rent under the *Act*.

Section 46 of the *Act* allows a landlord to end a tenancy where a tenant has failed to pay rent. The relevant portions of section 46 state:

- 46** (1) A 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.

(2) A notice under this section must comply with section 52...

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(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.

...

Section 52 of the *Act* sets out the requirements of a notice to end tenancy and states:

52 In order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) ...state the grounds for ending the tenancy,

...

(e) when given by a landlord, be in the approved form.

I accept the undisputed evidence of the Landlord and Co-landlord that the Landlord served the 10 Day Notice on the Tenant by posting it on his door. Based on this, I find that the 10 Day Notice was served on the Tenant in accordance with section 88(g) of the *Act*.

I accept the undisputed testimony of the Landlord and Co-landlord that the 10 Day Notice was served on the Tenant on February 9, 2018. I do not find it necessary to decide whether the Tenant received the 10 Day Notice on February 9, 2018. The *Act* deems the 10 Day Notice received by the Tenant on February 12, 2018, three days after it was posted, pursuant to section 90(c).

I have reviewed the 10 Day Notice and find that it does comply with section 52 of the *Act* as set out above.

The Tenant had five days from receipt of the 10 Day Notice to pay or dispute the notice under section 46(4) of the *Act*. I note that five days from February 12, 2018 is a Saturday. Pursuant to the definition of “Days” in the definition section of the Rules, the Tenant had until the following Monday, February 19, 2018, to pay or dispute the 10 Day Notice. I accept the undisputed testimony of the Landlord that the Tenant did not pay the outstanding rent or dispute the 10 Day Notice by February 19, 2018. Therefore, pursuant to section 46(5)(a) of the *Act*, the Tenant is conclusively presumed to have accepted that the tenancy ended on February 22, 2018, the effective date of the 10 Day Notice. The Tenant was required under section 46(5)(b) of the *Act* to vacate the rental unit by February 22, 2018. I accept the undisputed evidence of the Landlord that the Tenant has not vacated the rental unit.

The Landlord has applied for an Order of Possession pursuant to section 55(2)(b) of the *Act*. Based on the above, I find the Landlord is entitled to an Order of Possession. Pursuant to section 55(3) of the *Act*, I grant the Landlord an Order of Possession that takes effect two days after it is served on the Tenant.

In relation to the request for a Monetary Order, I note rule 4.2 of the Rules allows me to amend an application for dispute resolution at the hearing in “circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made”. I accept the undisputed evidence of the Landlord that at the time of the Application the Tenant owed \$590.00 in outstanding rent and at the time of the hearing the Tenant owed \$1,450.00 in outstanding rent. I find this is the very circumstance contemplated by rule 4.2 and therefore I amend the Application to reflect a request for a Monetary Order in the amount of \$1,450.00.

Section 7(1) of the *Act* states that if “a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results”. I have accepted the undisputed evidence of the Landlord that the Tenant has not paid full rent for January to April. Therefore, I find the Tenant has breached the tenancy agreement and section 26(1) of the *Act*. Given this, I find that the Tenant must compensate the Landlord for the resulting loss which, in this case, is the loss of rent for January to April.

Based on the above, and pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$1,450.00.

As the Landlord was successful in this application, I grant the Landlord a further \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*.

Conclusion

The Landlord is entitled to an Order of Possession effective **two (2) days after service on the Tenant**. This Order must be served on the Tenant and, if the Tenant does not

comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

The Landlord is also entitled to a Monetary Order in the amount of **\$1,550.00** pursuant to section 67 and 72(1) of the *Act*. This Order must be served on the Tenant and, if the Tenant does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: May 1, 2018

Residential Tenancy Branch