



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on May 4, 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 April 25, 2018 (the “Notice”). At the hearing, the Landlord sought reimbursement for the filing fee.

The Landlord attended the hearing with a translator. Nobody appeared for the Tenants. The hearing process was explained to the Landlord who did not have questions when asked. The Landlord provided affirmed testimony.

The Landlord had submitted a copy of the Notice as evidence. The Tenants had not submitted evidence. I addressed service of the hearing package and Landlord’s evidence. The Landlord testified that he served hearing packages and the Landlord’s evidence on both Tenants personally May 6, 2018.

I accept the undisputed testimony of the Landlord and find the Tenants were served with the hearing package and Landlord’s evidence in accordance with sections 59(3), 88(a) and 89(2)(a) of the *Residential Tenancy Act* (the “Act”) and rule 3.1 of the Rules of Procedure.

As I was satisfied with service, I proceeded with the hearing in the absence of the Tenants. The Landlord was given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered the documentary evidence and all oral testimony of the Landlord. I will only refer to the evidence I find relevant in this decision.

Issue to be Decided

1. Is the Landlord entitled to an Order of Possession based on the Notice?

Background and Evidence

The Landlord testified there is an oral tenancy agreement between him and the Tenants regarding the rental unit. He said the tenancy started in October of 2017 and is a month-to-month tenancy. He testified rent is \$2,000.00 due on the first of each month. He said there was no security deposit.

The Notice states the Tenants failed to pay \$2,000.00 rent due on April 1, 2018. The Notice is addressed to the Tenants although Tenant M.B.'s last name is missing the last letter. The Notice includes the rental unit address although the postal code is missing. The Landlord asked that the Notice be amended to include the missing information.

The Landlord testified that he served the Notice on the Tenants April 25, 2018. He said he gave the Notice to both Tenants personally and posted the Notice on the door of the rental unit.

The Landlord testified that the Tenants never paid the outstanding rent. He testified that the Tenants did not have a right to withhold rent under the *Act*. He said the Tenants never disputed the Notice.

Analysis

Section 26(1) of the *Act* requires tenants to pay rent in accordance with the tenancy agreement unless they have a right to withhold rent under the *Act*.

Section 46 of the *Act* allows a landlord to end a tenancy where tenants have 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.

...

Based on the undisputed testimony of the Landlord, I find the Tenants were obligated to pay \$2,000.00 on April 1, 2018 for April rent pursuant to the tenancy agreement. I accept the undisputed testimony of the Landlord that the Tenants did not have a right to withhold rent under the *Act*. Therefore, I find the Tenants were required to pay rent under section 26(1) of the *Act* and that section 46(3) of the *Act* does not apply. I accept the undisputed testimony of the Landlord that the Tenants had not paid April rent at the time of the hearing.

Given the Tenants failed to pay rent as required, the Landlord was entitled to serve them with the Notice pursuant to section 46(1) of the *Act*. I accept the undisputed testimony of the Landlord that he gave the Notice to both Tenants personally and posted the Notice on the door of the rental unit on April 25, 2018. I find the Notice was served on the Tenants in accordance with section 88(a) and (g) of the *Act*.

There are errors in the Notice as outlined above. Section 68 of the *Act* allows me to amend a notice to end tenancy if I am satisfied “the person receiving the notice knew, or should have known, the information that was omitted” and it is reasonable to do so in the circumstances. Here, I amend the Notice to include the correct spelling of Tenant M.B.’s last name and the postal code of the rental unit. This is information the Tenants would have known. Further, it is reasonable to amend the Notice as the errors are minor and could not have prejudiced the Tenants in any way.

Upon a review of the Notice, and considering the amendments, I find the Notice complies with section 52 of the *Act* in form and content as required by section 46(2) of the *Act*.

The Tenants had five days from receipt of the Notice to pay or dispute it under section 46(4) of the *Act*. I accept the undisputed testimony of the Landlord that the Tenants did not pay the outstanding rent or dispute the Notice. Therefore, I find pursuant to section 46(5)(a) of the *Act* that the Tenants are conclusively presumed to have accepted that the tenancy ended on May 6, 2018, the effective date of the Notice. The Tenants were required under section 46(5)(b) of the *Act* to vacate the rental unit by May 6, 2018.

Given 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 effective two days after service on the Tenants.

As the Landlord was successful in this application, I grant the Landlord \$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 days after service on the Tenants. This Order must be served on the Tenants and, if the Tenants do 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 \$100.00. This Order must be served on the Tenants and, if the Tenants do 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: June 06, 2018

Residential Tenancy Branch