



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on April 24, 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 15, 2018 (the "Notice"). The Landlord also sought a Monetary Order for unpaid rent and reimbursement for the filing fee. This was originally a Direct Request Proceeding but was adjourned to a participatory hearing as the tenancy agreement submitted did not state when rent is due which is necessary information to determine the validity of the Notice. At the hearing, the Landlord asked to keep the security deposit to offset the monies owed.

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

During the hearing, the Landlord provided the correct spelling of Tenant J.P.'s name and I amended the Application to reflect this. This is also reflected in the style of cause.

The Landlord had submitted evidence prior to the hearing. The Tenants had not submitted evidence. I addressed service of the hearing package and Landlord's evidence.

The Landlord testified she sent the hearing packages and evidence to the Tenants at the rental unit by registered mail on May 4, 2018. The Landlord submitted Canada Post Customer Receipts. The first Customer Receipt shows the package was addressed to Tenant J.P. and sent to the rental unit. It includes Tracking Number 1 as indicated on the front page of this decision. The Canada Post website shows this package was delivered May 10, 2018 and signed for by Tenant J.P.

The second Customer Receipt shows the package was addressed to Tenant T.S. and sent to the rental unit. It includes Tracking Number 2 as indicated on the front page of this decision. The Canada Post website shows this package was delivered May 10, 2018 and signed for by Tenant J.P.

Based on the undisputed testimony of the Landlord, the evidence submitted and the information on the Canada Post website, I find the Tenants were served with the hearing package and evidence in accordance with sections 59(3), 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the “Act”) and rule 3.1 of the Rules of Procedure (the “Rules”).

As I was satisfied of 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 all documentary evidence and oral testimony of the Landlord. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession based on the Notice?
2. Is the Landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

The Landlord submitted a written tenancy agreement as evidence. The agreement is between the Landlord and Tenant T.S. regarding the rental unit. The tenancy started June 1, 2016 and is a month-to-month tenancy. Rent is \$1,400.00 per month. The Landlord testified rent is due on the last day of each month and this was discussed with the Tenants. The Landlord confirmed a security deposit of \$700.00 was paid at the start of the tenancy. The agreement is signed by the Landlord and Tenant T.S. The Landlord testified there is an oral agreement between her and Tenant J.P. in the same terms as the written agreement.

The Notice states the Tenants failed to pay \$1,400.00 that was due April 1, 2018. The Landlord testified the agreement about when rent is due changed during the tenancy and became that the Tenants could pay rent at the end of the month or on the first of

each month. The Landlord confirmed \$1,400.00 was due April 1, 2018 for April rent and this is what is reflected in the Notice.

The Landlord testified she posted both pages of the Notice to the door of the rental unit on April 15, 2018. The Landlord submitted a Proof of Service regarding the Notice as evidence. It states the Notice was served on April 15, 2018 to the Tenants at the rental unit by attaching a copy to the door or other conspicuous place. The Proof of Service includes a signed witness statement stating that on April 15, 2018, the witness observed the Landlord give the Notice to the Tenants by attaching a copy to the door or other conspicuous place. The Landlord testified the witness came with her to serve the Notice and signed the Proof of Service.

The Landlord testified the Tenants did not pay the outstanding April rent or rent for May. She said the Tenants did not have authority under the *Act* to withhold rent. She testified the Tenants did not dispute the Notice.

The Landlord confirmed \$1,400.00 in rent was outstanding at the time of the Application and \$2,800.00 outstanding at the time of the hearing. The Landlord asked to amend the Application to request the full amount outstanding.

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, and the written tenancy agreement, I find the Tenants were obligated to pay \$1,400.00 by April 1, 2018 for April rent pursuant to the tenancy agreement and oral agreement with the Landlord. 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 or May 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 she posted the Notice to the door of the rental unit on April 15, 2018. This is supported by the signed witness statement in the Proof of Service. I find the Notice was served on the Tenants in accordance with section 88(g) of the *Act*. The Tenants are deemed to have received the Notice on April 18, 2018 pursuant to section 90(c) of the *Act*.

I have reviewed the Notice and find it 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 April 28, 2018, the corrected effective date of the Notice. The Tenants were required under section 46(5)(b) of the *Act* to vacate the rental unit by April 28, 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.

In relation to the request for a Monetary Order, 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 testimony of the Landlord that the Tenants owed further outstanding rent at the time of the hearing. I find this is the very circumstance contemplated by rule 4.2 and I amend the Application to request \$2,800.00 for outstanding rent from April and May.

Section 7(1) of the *Act* states that a tenant who does not comply with the *Act* or tenancy agreement must compensate the landlord for loss that results. I have accepted the undisputed testimony of the Landlord that the Tenants have not paid rent for April or May. Therefore, I find the Tenants have breached the tenancy agreement and section 26(1) of the *Act*. I find the Tenants must compensate the Landlord for the resulting loss which is the loss of rent for April and May.

Given the above, I find the Landlord is entitled to monetary compensation in the amount of \$2,800.00 for unpaid rent.

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*.

The Landlord is therefore entitled to monetary compensation in the amount of \$2,900.00. Pursuant to section 72(2)(b) of the *Act*, I authorize the Landlord to keep the \$700.00 security deposit to offset the monies owing. Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$2,200.00.

At the end of the hearing, the Landlord mentioned issues between her and the Tenants regarding possible threats or harassment or allegations of these. I understood the Landlord to say that police should be involved in this matter. I told the Landlord to contact the police regarding these issues if she believes they should be involved.

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 entitled to monetary compensation in the amount of \$2,900.00. I authorize the Landlord to keep the \$700.00 security deposit to offset the monies owing. I grant the Landlord a Monetary Order in the amount of \$2,200.00. 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