



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR (Tenant)
 OPRM-DR, FFL (Landlord)

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties.

The Tenant filed his application May 9, 2018 (the "Tenant's Application"). The Tenant disputed a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 3, 2018 (the "Notice"). The Tenant also disputed a One Month Notice to End Tenancy for Cause (the "One Month Notice").

The Landlord filed his application May 10, 2018 (the "Landlord's Application"). The Landlord applied for an Order of Possession based on the Notice. The Landlord also sought to recover monies owed for unpaid rent and reimbursement for the filing fee. At the hearing, the Landlord asked to keep the security deposit.

The Landlord appeared at the hearing. The Tenant did not appear at the hearing which lasted half an hour. I explained the hearing process to the Landlord who did not have questions when asked. The Landlord provided affirmed testimony.

The Tenant had not submitted evidence either on the Tenant's Application or Landlord's Application. The Landlord had submitted evidence. I addressed service of the hearing package and Landlord's evidence. The Landlord testified the hearing package and evidence were sent to the rental unit by registered mail on May 10, 2018. The Landlord had submitted a Canada Post Customer Receipt with Tracking Number 1 on it. The receipt has the Tenant's name and the postal code of the rental unit on it. With the permission of the Landlord, I looked up Tracking Number 1 on the Canada Post website which shows the package was delivered and signed for May 14, 2018. The signatory name is the same first initial of the Tenant and same last name.

Based on the undisputed testimony of the Landlord, as well as the Canada Post website information, I find the Landlord served the hearing package and evidence on the Tenant 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”). I also note the Tenant would have been aware of the hearing as the Tenant’s Application was scheduled for the same date and time.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. 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.

The Tenant never appeared for the hearing and therefore I have no evidence before me as to the basis for his dispute of the Notice and One Month Notice. In the absence of evidence from the Tenant, the Tenant’s Application is dismissed without leave to re-apply.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession based on the Notice?
2. Is the Landlord entitled to recover monies owed for unpaid rent?

Background and Evidence

The Landlord had submitted a written tenancy agreement. It is between the Landlord and Tenant. The tenancy started December 15, 2017. Rent is \$1,350.00 per month. The agreement does not indicate when rent is due. The Landlord testified rent is due on the first of each month. He said the Tenant knew this and this was the agreement. He testified that, when the Tenant first moved in, the Tenant provided three post dated cheques all of which were for the first of the month. The Landlord testified that a security deposit of \$675.00 was paid December 15, 2017.

The Notice states the Tenant failed to pay rent in the amount of \$1,350.00 due on May 1, 2018. The Landlord confirmed \$1,350.00 was due May 1, 2018 for May rent and this is what is reflected on the Notice.

The Landlord testified he served both pages of the Notice on the Tenant in person May 3, 2018. The Landlord had submitted page one of a Proof of Service in this regard. There is a signature after “10 Day Notice for failure to Pay Rent Received By” in the box at the bottom of page one. The Landlord testified this is the Tenant’s signature.

The Landlord testified the Tenant has not paid any outstanding rent since the Notice was issued. The Landlord said the Tenant did not have authority under the *Act* to withhold rent. The Landlord confirmed \$2,700.00 in rent is currently outstanding and asked to amend the Landlord’s Application to reflect this.

Analysis

Section 26(1) of the *Act* requires a tenant 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 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.

...

Based on the undisputed testimony of the Landlord, and the written tenancy agreement, I find the Tenant was obligated to pay \$1,350.00 by May 1, 2018 for May rent. I accept the undisputed testimony of the Landlord that the Tenant did not have a right to withhold rent under the *Act*. Therefore, I find the Tenant was 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 Tenant did not pay rent for May or June and that \$2,700.00 is currently outstanding. Given the Tenant failed to pay rent as required, the Landlord was entitled to serve him with the Notice pursuant to section 46(1) of the *Act*. I accept the undisputed testimony of the Landlord that he served the Notice on the Tenant personally on May 3, 2018. I accept the undisputed testimony of the Landlord that the Tenant signed the Proof of Service submitted and this supports my finding that the Tenant was served

with the Notice as the Landlord states. Further, the Tenant must have received the Notice as he disputed it. I find the Notice was served on the Tenant in accordance with section 88(a) of the *Act*.

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

The Tenant had five days from receipt of the Notice on May 3, 2018 to pay or dispute it under section 46(4) of the *Act*. I accept the undisputed testimony of the Landlord that the Tenant did not pay any outstanding rent since the Notice was issued. The Tenant did dispute the Notice. My records show the Tenant's Application was filed May 9, 2018. However, the paper version of the Tenant's Application seems to indicate it was filed May 7, 2018. I do not find it necessary to determine which date the Tenant's Application was filed as the outcome is the same regardless. The Tenant failed to appear at the hearing and provide a basis for disputing the Notice and I have dismissed the Tenant's Application without leave to re-apply.

I note that the Landlord has the onus to prove the Notice. Based on my findings above, the Landlord has proved the Notice. Therefore, the Notice is upheld.

Given I have dismissed the Tenant's Application, and found the Notice complies with section 52 of the *Act*, I grant the Landlord an Order of Possession pursuant to section 55(1) of the *Act*. The Order is effective two days after service on the Tenant.

I have accepted that \$2,700.00 rent is currently outstanding and I amend the Landlord's Application to reflect this amount pursuant to rule 4.2 of the Rules.

Given the above, I find the Landlord is entitled to monetary compensation in the amount of \$2,700.00 for unpaid rent.

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

In total, the Landlord is entitled to monetary compensation in the amount of \$2,800.00. Pursuant to section 72(2)(b) of the *Act*, I authorize the Landlord to keep the \$675.00 security deposit to offset the monies owed. Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$2,125.00.

Conclusion

The Tenant's Application is dismissed without leave to re-apply.

The Landlord is granted an Order of Possession effective two 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's Application is granted in relation to the request to recover monies owed for unpaid rent, to keep the security deposit and for reimbursement of the filing fee. The Landlord is entitled to monetary compensation in the amount of \$2,800.00. I authorize the Landlord to keep the \$675.00 security deposit to offset the monies owed. I grant the Landlord a Monetary Order in the amount of \$2,125.00. 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: June 28, 2018

Residential Tenancy Branch