



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

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 June 1, 2018 (the "Tenant's Application"). The Tenant disputed a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 31, 2018 (the "Notice"). The Tenant sought reimbursement for the filing fee.

The Landlord filed his application June 12, 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.

At the hearing, the Landlord provided the correct spelling of the street name for the rental unit and I amended the Landlord's Application accordingly. The correct street name is reflected on the first page of this decision.

The Landlord had filed an amendment to the Application June 18, 2018 (the "Amendment"). The Amendment refers to a new Notice to End Tenancy served June 18, 2018 which I did not address as no such notice was submitted. The Amendment changed the monetary claim to \$4,200.00 as the Tenant had not paid May or June rent.

The Landlord appeared at the hearing. J.F. appeared to assist the Landlord given a language barrier. The Tenant did not appear at the hearing which lasted 36 minutes. I explained the hearing process to the Landlord who did not have questions when asked. The Landlord provided affirmed testimony.

The Landlord had submitted evidence prior to the hearing. I addressed service of the hearing package and Landlord's evidence.

The Landlord testified that the hearing package, evidence and Amendment were served on the Tenant personally and by registered mail on June 18, 2018. The Landlord had submitted a Proof of Service with an Xpresspost receipt and tag attached. The Xpresspost tag is addressed to the Tenant at the rental unit. It includes Tracking Number 1 as indicated on the front page of this decision. With the permission of the Landlord, I looked up Tracking Number 1 on the Canada Post website which shows the package was delivered June 25, 2018. There is no signatory name. The Landlord also submitted a Proof of Service which states the package was hand delivered to the Tenant June 18, 2018. This includes a signed witness statement.

Based on the undisputed testimony of the Landlord, the evidence submitted and the Canada Post website information, I find the Landlord served the hearing package, evidence and Amendment on the Tenant in accordance with sections 88(a), 88(c), 89(1)(a) and 89(1)(c) of the *Residential Tenancy Act* (the "Act"). I also find the package was served on the Tenant in sufficient time to allow the Tenant to prepare for, and appear, at the hearing. Further, I 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. Given the Tenant never appeared for the hearing, I have no evidence before me as to the basis for his dispute of the Notice. The Tenant had only submitted a copy of the Notice as evidence prior to the hearing. In the absence of evidence from the Tenant, the Tenant's Application is dismissed without leave to re-apply.

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 had submitted a written tenancy agreement. It is between the Landlord and the Tenant regarding the rental unit. The tenancy started June 1, 2017 and was for a fixed term of one year ending May 31, 2018. The agreement does not indicate the rent amount. The Landlord testified the rent is \$2,100.00 per month. He said the Tenant understood this and had provided 12 rent cheques in this amount at the start of the tenancy. Rent is due on the first of the month. The Landlord testified that a \$1,050.00 security deposit was paid and that he still has this. The agreement is signed by the Landlord and Tenant.

The Notice states the Tenant failed to pay \$2,100.00 rent due May 1, 2018. The Landlord testified that \$2,100.00 rent was due May 1st for May rent and this is what is reflected on the Notice. The Landlord had submitted a Returned Item Notice showing the Tenant's May rent cheque for \$2,100.00 was returned due to insufficient funds.

The Notice does not include the province or postal code of the rental unit in the first space provided for the Tenant's address. The Notice does not include the postal code in the second space provided for the rental unit. The Landlord asked that the Notice be amended to include the missing information.

The Landlord testified that he served both pages of the Notice on the Tenant by posting it on the door of the rental unit May 31, 2018. He had submitted two photos showing the Notice posted on a door. One photo shows the unit number of the rental unit.

The Landlord testified that the Tenant did not pay any of the outstanding rent after the Notice was served. The Tenant disputed the Notice June 1, 2018. The Landlord testified that the Tenant did not have authority under the *Act* to withhold rent.

The Landlord testified that \$4,200.00 in rent was outstanding at the time he filed the Amendment. The Landlord testified that \$6,300.00 in rent was outstanding for May, June and July at the time of the hearing. The Landlord asked to amend the Application to reflect the full amount outstanding.

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.

...

Section 55(1) of the *Act* requires me to issue an Order of Possession when a tenant disputes a notice to end tenancy and the application is dismissed or the notice is upheld. The notice must comply with section 52 of the *Act*.

Based on the undisputed testimony of the Landlord, and the written tenancy agreement, I find the Tenant was obligated to pay \$2,100.00 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, June or July and that \$6,300.00 is currently outstanding. The Returned Item Notice supports that May rent was not paid. 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 by posting it on the door of the rental unit May 31, 2018. The photos support this. I also note 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(g) of the *Act*.

The Landlord asked to amend the Notice to include the missing province and postal code of the rental unit. Pursuant to section 68(1) of the *Act*, I am permitted to amend the Notice if satisfied the Tenant “knew, or should have known, the information that was omitted” and it is reasonable to do so. I find the Tenant should have known the province and postal code of the rental unit. I find the omissions could not have caused the Tenant confusion or prejudiced him in any way given the nature of the missing information. I find it reasonable to amend the Notice in the circumstances and I do so.

Upon a review of the Notice, and considering the amendments, 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 31, 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 after the Notice was issued. The Tenant did dispute the Notice on June 1, 2018. However, the Tenant failed to appear at the hearing and provide a basis for disputing the Notice and so I have dismissed the Tenant’s Application without leave to re-apply.

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 \$6,300.00 in rent is currently outstanding and I amend the Landlord’s Application to reflect this amount pursuant to rule 4.2 of the Rules of Procedure.

Given the above, I find the Landlord is entitled to monetary compensation in the amount of \$6,300.00 for unpaid rent.

As the Landlord was successful in this application, I award him 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 \$6,400.00. Pursuant to section 72(2)(b) of the *Act*, I authorize the Landlord to keep the \$1,050.00 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 \$5,350.00.

Conclusion

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

The Landlord's Application is granted.

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 is entitled to monetary compensation in the amount of \$6,400.00. I authorize the Landlord to keep the \$1,050.00 security deposit to offset the monies owed. I grant the Landlord a Monetary Order in the amount of \$5,350.00. 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: July 12, 2018

Residential Tenancy Branch