



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, OPRM-DR

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlords on May 18, 2018 (the “Application”). The Landlords applied for an Order of Possession based on 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 06, 2018 (the “Notice”). The Landlords also sought to recover unpaid rent and reimbursement for the filing fee. This was a direct request that was adjourned to a hearing as the Landlords had not submitted a completed Proof of Service regarding the Notice. At the hearing, the Property Manager asked to keep the security deposit.

The Property Manager appeared at the hearing and appeared for V.F. Nobody appeared for the Tenant. I explained the hearing process to the Property Manager. The Property Manager provided affirmed testimony.

The Property Manager provided the full legal name of the Tenant during the hearing and asked to amend the Application to reflect this. The full legal name is reflected in the style of cause.

The Landlords had submitted evidence prior to the hearing. I addressed service of the hearing package and Landlords’ evidence. The Property Manager testified that the hearing package and evidence were posted on the door of the rental unit May 25, 2018. The Property Manager had not submitted evidence regarding this.

Based on the undisputed testimony of the Property Manager, I find the Tenant was served with the hearing package and evidence in accordance with section 89(2)(d) 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.

I told the Property Manager that service under section 89(2)(d) of the *Act* is only sufficient for an application for an Order of Possession under section 55 of the *Act* and not for a Monetary Order under section 67 of the *Act*. I told the Property Manager I would only deal with the request for an Order of Possession and would dismiss the request for a Monetary Order with leave to re-apply. The Property Manager was fine with this.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Property Manager 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 Property Manager. 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 reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence. The tenancy started June 1, 2016 and is a month-to-month tenancy. Rent was \$750.00 per month due on the first of each month. The Property Manager testified that rent increased to \$777.75 in 2017. A Notice of Rent Increase was submitted as evidence. The Property Manager said a \$375.00 security deposit was paid at the start of the tenancy. She said the Landlords still hold the deposit.

The Notice states the Tenant failed to pay \$1,355.50 rent due on May 1, 2018. The Notice is on an old version of the RTB form. The Tenant's first name on the Notice is his nickname rather than his full legal name.

The Landlords submitted a Direct Request Worksheet showing the outstanding rent. The Tenant did not pay April or May rent except for \$200.00 on May 2, 2018. The Property Manager confirmed this.

The Property Manager testified as follows. She gave the Notice to the Tenant personally May 6, 2018. The Tenant tried to pay a further \$200.00 rent between May 6 and May 16, 2018; however, she refused to accept this. The last rent payment

accepted was the \$200.00 on May 2, 2018. She heard from others that the Tenant disputed the Notice but never received documentation regarding this. The Tenant did not have authority under the *Act* to withhold rent.

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 Property Manager, and the written tenancy agreement, I find the Tenant was obligated to pay rent for April by April 1st and for May

by May 1st. I accept the undisputed testimony of the Property Manager 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 Property Manager that the Tenant did not pay rent for April or May except for \$200.00 on May 2, 2018. Given the Tenant failed to pay rent as required, the Landlords were entitled to serve him with the Notice pursuant to section 46(1) of the *Act*.

I accept the undisputed testimony of the Property Manager that she served the Notice on the Tenant personally on May 6, 2018. I find the Notice was served on the Tenant in accordance with section 88(a) of the *Act*.

I acknowledge the Notice is on an old version of the RTB form; however, I find it includes the necessary information. Further to section 10(2) of the *Act*, I find the form used to be a valid form.

The Property Manager asked to amend the Notice to include the full legal first name of the Tenant. 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. The Tenant would have known his full legal name. The Property Manager testified that everyone calls the Tenant by the name written on the Notice. Based on the undisputed testimony of the Property Manager, I find the name used on the Notice could not have caused the Tenant confusion or prejudiced him in any way. I find it reasonable to amend the Notice in the circumstances and I do so.

Upon a review of the Notice, and considering the amendment, 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 6, 2018 to pay or dispute it under section 46(4) of the *Act*. I accept the undisputed testimony of the Property Manager that the Tenant only attempted to pay \$200.00 of the outstanding rent after the Notice was issued. I do not find this attempt to be sufficient to cancel the Notice under section 46(4)(a) of the *Act* as the Tenant did not attempt to pay the full amount outstanding. I have no evidence before me that the Tenant disputed the Notice. Given the above, the Tenant was conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended May 16, 2018, the effective date of the Notice. The Tenant was required to vacate the rental unit by May 16, 2018. The Landlords are

entitled to an Order of Possession and I grant this Order pursuant to section 55(2)(b) of the *Act*. The Order is effective two days after service on the Tenant.

As the Landlords were successful in this application, I award them reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 72(2)(b) of the *Act*, I authorize the Landlords to keep \$100.00 of the security deposit as reimbursement for the filing fee.

Conclusion

The Landlords' application for an Order of Possession is granted. The Landlords are 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 Landlords are entitled to reimbursement for the \$100.00 filing fee. I authorize the Landlords to keep \$100.00 of the security deposit as reimbursement for the filing fee.

The Landlords' application for a Monetary Order for unpaid rent is dismissed with leave to re-apply.

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 16, 2018

Residential Tenancy Branch