



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 Landlord on May 17, 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 January 29, 2018 (the "Notice"). The Landlord also sought to recover unpaid rent and reimbursement for the filing fee. This was a direct request proceeding that was adjourned to a hearing as the Landlord had not submitted sufficient proof of service of the Notice. At the hearing, the Landlord asked to keep the security deposit to offset monies owed.

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

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

The Landlord had submitted an Affidavit of Service. The Affidavit states that the hearing package was served by a process serving agent on the Tenant personally June 7, 2018. It includes a copy of the documents served. It is sworn or affirmed by the process serving agent.

Legal counsel for the Landlord pointed to the Proof of Service Notice of Direct Request Proceeding submitted as evidence in relation to service of the Landlord's evidence on the Tenant. The Proof of Service indicates that a copy of all supporting documents was served on the Tenant personally on May 31, 2018. Legal counsel confirmed it is the Tenant's signature on the Proof of Service. The Proof of Service is also signed by the process serving agent.

Legal counsel advised that neither the Affidavit of Service relating to the hearing package nor the Affidavit of Service relating to the Notice (the "Affidavits") were served on the Tenant as evidence in this proceeding.

Based on the Affidavit of Service relating to the hearing package, I find the Tenant was served with the hearing package in accordance with section 89(1)(a) of the *Residential Tenancy Act* (the "Act"). Based on the Proof of Service signed by the process serving agent and the Tenant, I find the evidence was served on the Tenant in accordance with section 88(a) of the Act. I also find the hearing package and evidence were served in sufficient time to allow the Tenant to prepare for, and appear at, the hearing.

Although the Landlord did not serve the Affidavits on the Tenant, I admit these as evidence as they relate to information the Tenant would have been aware of and therefore I find admission does not prejudice the Tenant or result in a breach of the principles of natural justice.

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.

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?
3. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord had submitted a written tenancy agreement. It is between the Landlord, Tenant and a third party who apparently has moved out of the rental unit. It relates to the rental unit. The tenancy started December 1, 2012 and is a month-to-month tenancy. The rent is \$650.00 per month. The agreement is not clear on when rent is due as it states, "the first of each month" in relation to when the first rent payment is due. The Landlord testified that the agreement is that rent is due on the first of each month and the Tenant was aware of this. The agreement states that a security deposit of \$325.00 was paid. The agreement is signed by the Landlord and Tenant.

The Notice is addressed to the Tenant. It states the Tenant failed to pay rent in the amount of \$5,200.00 due on January 1, 2018. The Notice has an effective date of February 15, 2018. The Landlord confirmed the Notice reflects outstanding rent from June of 2017 to January of 2018.

The Landlord had submitted an Affidavit of Service relating to the Notice. It states that the process serving agent served a copy of the Notice on the Tenant personally on February 2, 2018. A copy of the Notice is attached. It is sworn or affirmed by the process serving agent.

The Landlord testified as follows. The Tenant has not paid rent since June of 2017 and did not pay any outstanding rent after the Notice was issued. The Tenant did not dispute the Notice at any point. The Tenant did not have authority under the *Act* to withhold rent.

Legal counsel for the Landlord asked that the Application be amended to request outstanding rent from June of 2017 to present being \$8,450.00.

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 written tenancy agreement, and undisputed testimony of the Landlord, I find the Tenant was obligated to pay rent in the amount of \$650.00 per month by the first of each month. 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 from June of 2017 to present 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 has not paid any rent since June of 2017. Legal counsel for the Landlord calculated the current outstanding rent amount to be \$8,450.00; however, I find it is \$9,100.00. 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*. Based on the Affidavit of Service, I find the Notice was served on the Tenant in accordance with section 88(a) of the *Act* and that the Tenant received the Notice February 2, 2018.

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 Tenant 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 Tenant did not pay any of the outstanding rent or dispute the Notice at any point. Therefore, pursuant to section 46(5)(a) of the *Act*, the Tenant is conclusively presumed to have accepted that the tenancy ended February 15, 2018, the effective date of the Notice. The Tenant was required under section 46(5)(b) of the *Act* to vacate the rental unit by February 15, 2018.

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 Tenant.

I have accepted the undisputed testimony of the Landlord that the Tenant has not paid rent since June of 2017 and have found that \$9,100.00 in rent is currently outstanding. I find the Landlord is entitled to monetary compensation in the amount of \$9,100.00 for unpaid rent and I amend the Application to reflect this amount pursuant to rule 4.2 of the Rules of Procedure.

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 \$9,200.00. Pursuant to section 72(2) of the *Act*, the Landlord is authorized to keep the \$325.00 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 \$8,875.00.

Conclusion

The Landlord is entitled to 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 \$9,200.00. The Landlord is authorized to keep the \$325.00 security deposit to offset the monies owed. The Landlord is granted a Monetary Order in the amount of \$8,875.00. 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 25, 2018

Residential Tenancy Branch