



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNRL, OPR

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on May 15, 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 May 3, 2018. The Landlord also sought to recover unpaid rent and reimbursement for the filing fee.

The Landlord had submitted an amendment to the Application June 11, 2018 (the “Amendment”). It indicated a new 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was served June 2, 2018. It changed the monetary claim to \$2,000.00.

The Landlord attended the hearing. 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 testified that the hearing package and evidence were sent to the rental unit by registered mail on May 25, 2018. The Landlord had submitted a Canada Post receipt with Tracking Number 1, as indicated on the front page of this decision. With the permission of the Landlord, I looked up this tracking number on the Canada Post website. The website shows the package was delivered and signed for by the Tenant May 28, 2018.

The Landlord testified that the Amendment package was sent to the rental unit by registered mail on June 11, 2018. The Landlord had submitted a Canada Post receipt

with Tracking Number 2, as indicated on the front page of this decision. With the permission of the Landlord, I looked up this tracking number on the Canada Post website. The website shows the package was delivered and signed for by the Tenant June 12, 2018. I do note that the signature shown does not appear to be the Tenant's as it appears to be a different name.

Based on the undisputed testimony of the Landlord, the evidence submitted and the information on the Canada Post website, I find the Tenant was served with the hearing package, evidence and Amendment package in accordance with sections 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the "Act"). I also find the hearing package, evidence and Amendment package were served in sufficient time to allow the Tenant to prepare for, and appear, at the hearing.

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 a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities?
2. Is the Landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

The Landlord testified as follows. There is an oral tenancy agreement between her and the Tenant regarding the rental unit. The tenancy started approximately one-and-a-half years ago. It is a month-to-month tenancy. Rent is \$1,000 per month due on the first of each month. No security deposit was paid.

The Landlord had submitted 10 Day Notices to End Tenancy for Unpaid Rent or Utilities dated March 1, 2018, March 12, 2018, May 3, 2018 and June 2, 2018.

The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 2, 2018 (the "Notice") states the Tenant failed to pay \$1,000.00 rent due June 1, 2018.

The Landlord testified that she served the Notice on the Tenant June 2, 2018 by posting it on the door of the rental unit.

The Landlord testified that she also served a Two Month Notice to End Tenancy for Landlord's Use of Property on the Tenant February 22, 2018. She had submitted a copy of the Two Month Notice and confirmed the effective date was June 30, 2018. She said the Tenant decided to take March as her rent-free month pursuant to the Two Month Notice. The Landlord acknowledged the Tenant had authority under the *Act* to withhold rent for March further to the Two Month Notice.

The Landlord testified the Tenant paid rent for April. She testified that the Tenant never paid rent for May or June. She confirmed she received no further rent from the Tenant after the Notice was issued. The Landlord was not aware of the Tenant disputing the Notice. The Landlord testified that the Tenant did not have authority under the *Act* to withhold May or June rent.

The Landlord said she had been told by a third party that the Tenant moved out of the rental unit July 2, 2018; however, she had not received confirmation or correspondence regarding this from the Tenant. The Landlord requested \$2,000.00 compensation for unpaid rent for May and June.

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, I find the Tenant was obligated to pay \$1,000.00 by June 1, 2018 for June rent pursuant to the oral tenancy agreement. I accept the undisputed testimony of the Landlord that the Tenant did not have a right to withhold June rent under the *Act*. Therefore, I find the Tenant was required to pay June 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 never paid May or June rent and that \$2,000.00 is currently outstanding. Given the Tenant failed to pay rent as required, the Landlord was entitled to serve her with the Notice pursuant to section 46(1) of the *Act*. I accept the undisputed testimony of the Landlord that she posted the Notice on the door of the rental unit June 2, 2018. I find the Notice was served on the Tenant in accordance with section 88(g) of the *Act*. The Tenant is deemed to have received the Notice on June 5, 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 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 the outstanding rent or dispute the Notice. Therefore, I find pursuant to section 46(5)(a) of the *Act* that the Tenant is conclusively presumed to have accepted that the tenancy ended June 15, 2018, the corrected effective date of the Notice. The Tenant was required under section 46(5)(b) of the *Act* to vacate the rental unit by June 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 never paid May or June rent and that \$2,000.00 is currently outstanding. I find the Landlord is entitled to monetary compensation in the amount of \$2,000.00 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 \$2,100.00. Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$2,100.00.

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 a Monetary Order in the amount of \$2,100.00. 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