



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNRL-S, OPC, OPR (Landlord)
 CNR, MT (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 August 7, 2018 (the “Tenant’s Application”). The Tenant disputed a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 2, 2018 (the “10 Day Notice”). The Tenant sought more time to file the Tenant’s Application pursuant to section 66(1) of the *Residential Tenancy Act* (the “Act”).

The Tenant submitted an amendment to the Tenant’s Application dated August 13, 2018 (the “Amendment”). The Amendment adds a claim related to internet services. The Amendment includes a Monetary Order Worksheet claiming \$20,072.00.

The Landlord filed his application August 8, 2018 (the “Landlord’s Application”). The Landlord applied as follows: for an Order of Possession based on the 10 Day Notice; for an Order of Possession based on a One Month Notice to End Tenancy for Cause dated July 25, 2018 (the “One Month Notice”); to recover unpaid rent; to keep the security deposit; and for reimbursement for the filing fee.

The Landlord appeared at the hearing. Nobody appeared at the hearing for the Tenant. I explained the hearing process to the Landlord who did not have questions when asked. The Landlord provided affirmed testimony.

The Landlord had submitted a Monetary Order Worksheet requesting \$15.56 for the cost of sending the hearing package to the Tenant. He also requested \$1,000.00 for damage to the rental unit. I advised the Landlord he was not entitled to reimbursement

for the cost of sending the hearing package to the Tenant. I also told the Landlord I would not consider the request for the \$1,000.00 as it was premature and not noted on the Landlord's Application.

The Landlord confirmed the correct spelling of the Tenant's first name and I amended the Application. The amendment is reflected in the style of cause.

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

The Landlord testified that the hearing package and some evidence were sent to the rental unit by registered mail on August 11, 2018. The Landlord had submitted a registered mail receipt with Tracking Number 1 on it. With permission, I looked this up on the Canada Post website which shows the package was delivered and signed for by the Tenant on August 13, 2018.

The Landlord had also submitted an email from the Tenant dated August 13, 2018. The subject line states "I received your evidence package". The email states that the Landlord did not need to send the package by registered mail and that the Tenant would have accepted it if the Landlord left it on his door.

The Landlord testified that some of the evidence was served at the beginning of September, a week prior to the deadline for doing so. He said this package was left tucked into the door of the rental unit. He testified that this included a response to the Tenant's evidence, the email correspondence submitted and the Monetary Order Worksheet.

Based on the undisputed testimony of the Landlord, evidence submitted and Canada Post website information, I find the hearing package and first package of evidence were served on the Tenant in accordance with sections 59(3), 88(c) and 89(1)(c) of the *Act* as well as rule 3.1 of the Rules of Procedure (the "Rules").

Based on the undisputed testimony of the Landlord, I find the second evidence package was served on the Tenant in accordance with section 88(g) of the *Act*. The package is deemed received by the Tenant pursuant to section 90 of the *Act*. I find the second evidence package was served in sufficient time for the Tenant to prepare for the hearing.

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.

Rule 7.3 of the Rules states that an arbitrator can dismiss an Application for Dispute Resolution without leave to re-apply if a party fails to attend the hearing. Rule 7.4 of the Rules states that, at a hearing, evidence must be presented by the party who submitted it or by an agent for that party.

I have not considered any evidence submitted by the Tenant given he did not appear to present his evidence at the hearing. Further, because the Tenant did not appear for the hearing, I have no evidence before me as to the basis for the Tenant's Application. 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 the Landlord's documentary evidence and oral testimony. 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 10 Day Notice?
2. Is the Landlord entitled to an Order of Possession based on the One Month Notice?
3. Is the Landlord entitled to recover unpaid rent?
4. Is the Landlord entitled to keep the security deposit?
5. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord testified that he did not recall whether there was a written tenancy agreement between him and the Tenant or if the agreement was verbal. He testified that there is a tenancy agreement between him and the Tenant in relation to the rental unit. He said the tenancy started in 2010 or 2011 and is a month-to-month tenancy. He testified that rent is \$850.00 per month due on the first day of each month. He said the Tenant paid a \$400.00 security deposit that he still holds.

The 10 Day Notice states the Tenant failed to pay \$850.00 in rent due August 1, 2018. It is addressed to the Tenant and refers to the rental unit. It is signed and dated August 2, 2018 by the Landlord. It has an effective date of August 15, 2018.

The Landlord testified that he served both pages of the 10 Day Notice on the Tenant August 2, 2018 by posting it on the door of the rental unit. He submitted a Proof of Service signed by a witness supporting this.

The Landlord testified that the Tenant never paid any of the outstanding rent after the 10 Day Notice was issued. He testified that the Tenant did not have authority under the *Act* to withhold rent.

The Landlord confirmed rent for August and September is currently outstanding and asked to amend the Landlord's Application to request the full amount outstanding.

The Landlord submitted the following email correspondence. An email from the Tenant to the Landlord dated August 2, 2018 with a subject line of "I want nothing more than to pay you". An email from the Tenant to the Landlord again dated August 2, 2018 in which the Tenant states, "...I will...and try my best to get you some money. I'll give you what ever they give me". An email from him to the Tenant dated August 10, 2018 asking for August rent. An email from the Tenant to the Landlord dated August 13, 2018 in which the Tenant states, "I was hoping it was a cheque from my employer...Almost thought I was going to be able to pay you today. But it wasn't". An email from him to the Tenant dated September 3, 2018 asking about August and September rent.

The Landlord submitted photos of receipts indicating rent is \$850.00 per month.

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 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 has disputed 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, the emails submitted and the receipts submitted, I find the Tenant was obligated to pay \$850.00 for August rent by August 1, 2018. I accept the undisputed testimony of the Landlord that the Tenant did not have a right to withhold rent under the *Act* and find this is supported by the email correspondence submitted. 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.

Based on the undisputed testimony of the Landlord, and the email evidence submitted, I accept that the Tenant did not pay August rent by August 1, 2018. Given the Tenant failed to pay rent as required, the Landlord was entitled to serve him with the 10 Day Notice pursuant to section 46(1) of the *Act*. Based on the undisputed testimony of the Landlord, and the Proof of Service, I find the Tenant was served with the 10 Day Notice in accordance with section 88(g) of the *Act*. Pursuant to section 90(c) of the *Act*, the Tenant is deemed to have received the 10 Day Notice on August 5, 2018. I also note the Tenant must have received the Notice as he disputed it.

Upon a review of the 10 Day 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 10 Day Notice on August 5, 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 of the outstanding rent after the Notice was issued. This is supported by the email correspondence submitted. The Tenant did dispute the Notice on August 7, 2018. However, the Tenant failed to appear at the hearing and provide a basis for disputing the 10 Day Notice and I have dismissed the Tenant's Application without leave to re-apply. Given I have dismissed the Tenant's Application and have found the 10 Day Notice complies with section 52 of the *Act*, the Landlord is entitled to an Order of Possession pursuant to section 55(1) of the *Act*.

I find the Landlord is entitled to an Order of Possession based on the 10 Day Notice and grant the Landlord this Order. The Order is effective two days after service on the Tenant.

I accept the undisputed testimony of the Landlord that the Tenant has not paid rent for August or September and find the email correspondence submitted supports this. The Landlord asked to amend the Landlord's Application to include the full amount of \$1,700.00 outstanding and I do so pursuant to rule 4.2 of the Rules. I find the Landlord is entitled to recover the \$1,700.00 in unpaid rent.

As the Landlord was successful in this application, I award the Landlord 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 \$1,800.00. Pursuant to section 72(2)(b) of the *Act*, I authorize the Landlord to keep the \$400.00 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 \$1,400.00.

Given my decision in relation to the 10 Day Notice, the request for an Order of Possession based on the One Month Notice is no longer an issue.

Conclusion

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

The Landlord's Application is granted in part.

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 \$1,800.00. I authorize the Landlord to keep the \$400.00 security deposit to offset the monies owed. I grant the Landlord a Monetary Order in the amount of \$1,400.00. 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.

The request for an Order of Possession based on the One Month Notice is no longer an issue given my decision on the 10 Day Notice.

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: September 27, 2018

Residential Tenancy Branch