



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUTTON MAX REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL, MNRL-S, OPC, OPR

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on August 22, 2018 (the "Application"). The Landlord sought the following: an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 5, 2018 (the "Notice"); an Order of Possession based on a One Month Notice to End Tenancy for Cause dated July 5, 2018; to recover unpaid rent; to keep the security deposit; and reimbursement for the filing fee.

The Agent, Property Manager and Leasing Agent appeared at the hearing for the Landlord. Nobody appeared at the hearing for the Tenants. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

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

The Agent testified that the hearing package and evidence were sent by registered mail to the rental unit to each of the Tenants on August 27, 2018. The Agent said the packages were returned.

The Landlord had submitted Canada Post Customer Receipts for the packages showing they were sent to the Tenants. The Customer Receipts include Tracking Number 1 and Tracking Number 2. With permission, I looked these up on the Canada Post website. The website shows the packages were unclaimed.

Based on the undisputed testimony of the Agent, the evidence submitted and the Canada Post website information, I find the Tenants were served with the hearing

package and Landlord's evidence in accordance with sections 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the "*Act*"). Further, I find the packages were sent in sufficient time to allow the Tenants to prepare for, and appear at, the hearing. I note that the Tenants are deemed to have received the packages pursuant to section 90 of the *Act*. I also note that the Tenants are not permitted to avoid service by failing to claim the packages.

Given I was satisfied of service, I proceeded with the hearing in the absence of the Tenants. The Agent, Property Manager and Leasing Agent were 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 parties. I will only refer to the evidence I find relevant in this decision.

I note that the Agent advised during the hearing that the request for an Order of Possession based on the One Month Notice to End Tenancy for Cause was an error. I did not consider this request during the hearing.

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 keep the security deposit?
4. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement had been submitted as evidence. It names a different landlord than the Landlord on the Application. The Leasing Agent testified that the landlord on the agreement is the owner of the rental unit. She said the owner hired the Landlord to manage the rental unit in December of 2017. She confirmed the Tenants were aware of this.

The tenancy agreement is with the Tenants and relates to the rental unit. The tenancy started April 1, 2017 and was for a fixed term ending March 31, 2018. Rent is \$975.00 per month due on the first day of each month. The Tenants paid a \$525.00 security deposit that the Landlord still holds. The agreement is signed by the landlord and Tenants.

The Notice states the Tenants failed to pay \$725.00 in rent due July 1, 2018. It is addressed to the Tenants and relates to the rental unit. It is signed and dated by an agent for the Landlord. It has an effective date of July 18, 2018.

The Agent testified that he and another agent for the Landlord served both pages of the Notice on the Tenants in person at the rental unit on July 7, 2018.

The Leasing Agent confirmed that the Tenants failed to pay \$725.00 of July rent by July 1, 2018 and this is what is reflected in the Notice.

The Leasing Agent testified that the Tenants paid \$1,000.00 of rent on August 2, 2018 and \$800.00 on October 5, 2018. Both the Leasing Agent and the Agent testified that the Tenants were advised these payments were for use and occupancy only.

The Agent testified that the Tenants did not dispute the Notice. The Leasing Agent testified that the Tenants did not have authority under the *Act* to withhold rent.

The Leasing Agent testified that the Tenants currently owe \$1,850.00 in outstanding rent and asked to amend the Application to request the full amount.

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 parties, I find the Tenants were obligated to pay \$975.00 by July 1, 2018 for July rent. I accept the undisputed testimony of the Leasing Agent that the Tenants did not have a right to withhold rent under the *Act*. Therefore, I find the Tenants were required to pay July 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 Leasing Agent that the Tenants failed to pay \$725.00 of the \$975.00 rent for July. Given the Tenants failed to pay rent as required, the Landlord was entitled to serve them with the Notice pursuant to section 46(1) of the *Act*.

I accept the undisputed testimony of the Agent in relation to service of the Notice and find the Tenants were served with the Notice in accordance with section 88(a) of the *Act*. Given it was personally served, I find the Tenants received the Notice July 7, 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 Tenants 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 Leasing Agent that the Tenants did not pay the outstanding rent until August 2, 2018. I also accept the undisputed testimony of the Agent that the Tenants did not dispute the Notice.

Given the above, I find pursuant to section 46(5) of the *Act* that the Tenants are conclusively presumed to have accepted that the tenancy ended July 18, 2018, the effective date of the Notice. The Tenants were required under section 46(5) of the *Act* to vacate the rental unit by July 18, 2018.

The Landlord is entitled to an Order of Possession. Pursuant to section 55 of the *Act*, I grant the Landlord an Order of Possession effective two days after service on the Tenants.

Further, I accept the undisputed testimony of the Leasing Agent that the Tenants currently owe \$1,850.00 in outstanding rent and amend the Application to reflect this amount pursuant to rule 4.2 of the Rules of Procedure.

I find the Landlord is entitled to monetary compensation in the amount of \$1,850.00 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 \$1,950.00. Pursuant to section 72(2) of the *Act*, the Landlord can keep the \$525.00 security deposit. Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$1,425.00.

Conclusion

The Landlord is entitled to an Order of Possession effective two days after service on the Tenants. This Order must be served on the Tenants and, if the Tenants do 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 \$1,950.00. The Landlord can keep the \$525.00 security deposit. The Landlord is granted a Monetary Order in the amount of \$1,425.00. This Order must be served on the Tenants and, if the Tenants do 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: October 12, 2018

Residential Tenancy Branch