



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNRL-S, OPM, OPR

Introduction

This hearing was convened by way of conference call. The Landlord had filed an Application for Dispute Resolution on December 6, 2018 (the "Application"). The Landlord applied for an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 2, 2018 (the "Notice"). The Landlord also sought money for unpaid rent, to keep the security deposit and reimbursement for the filing fee.

The Landlord filed an amendment to the Application on December 7, 2018 (the "Amendment"). The Landlord sought to remove a request which was not clear to me. The Landlord also sought an Order of Possession based on a mutual agreement.

The Landlord appeared at the hearing. The Tenant did not appear for the hearing which lasted 33 minutes. I explained the hearing process 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 he served the hearing package and evidence on the Tenant in person at the rental unit on December 6, 2018. The Landlord testified that he also sent the package by registered mail to the rental unit on December 6, 2018. The Landlord did not have the tracking number for this with him.

The Landlord testified that he served the Amendment on the Tenant in person at the rental unit on December 7, 2018.

I note that the Landlord submitted text messages which appear to be between his son and the Tenant. One of the text messages is dated January 8, 2019. It appears the Tenant replied to a text and stated, “on the 18th when we have our hearing with residential tenancy branch...”. The Landlord did not refer to this text message during the hearing.

Based on the undisputed testimony of the Landlord, I find the Tenant was served with the hearing package, evidence and Amendment in accordance with sections 59(3), 88(a) and 89(1)(a) of the *Residential Tenancy Act* (the “Act”) as well as rule 3.1 of the Rules of Procedure (the “Rules”).

I note that the text message submitted supports the finding that the Tenant was served with the hearing package as it appears she was aware of the hearing today. However, the Landlord did not point to this during the hearing and I am satisfied based on the undisputed testimony of the Landlord alone that the Tenant was served with the hearing package in accordance with the *Act*.

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 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 recover unpaid rent?
3. Is the Landlord entitled to keep the security deposit?
4. Is the Landlord entitled to an Order of Possession based on a mutual agreement?
5. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord submitted a written tenancy agreement. It is between the Landlord, his wife and the Tenant in relation to the rental unit. The tenancy started October 1, 2018 and is a month-to-month tenancy. Rent is \$1,600.00 per month due on the first day of each month. The Landlord advised that the Tenant paid a security deposit of \$800.00. The agreement is signed by the Landlord and Tenant.

The Landlord submitted a Mutual Agreement to End a Tenancy (the "Mutual Agreement"). It states the Landlord's name and Tenant's name. It relates to the rental unit. It states that the Tenant agrees to vacate the rental unit at 12 noon on the 13th day of December 2018. It was signed December 3, 2018 by the Landlord and Tenant. The Landlord confirmed the Tenant signed the Mutual Agreement.

The Notice was submitted as evidence. It was dated December 2, 2018 with an effective date of December 13, 2018. The Landlord testified that the Notice was served on the Tenant December 2, 2018. The Notice is on an old form that does not include the amount of rent outstanding or when the outstanding rent was due. The Landlord testified that the Notice was issued for outstanding rent from November and December of 2018.

The Landlord testified that the Tenant failed to pay \$200.00 of the rent for November. He testified that the Tenant did not pay any rent for December or January. The Landlord testified that the Tenant did not have authority under the *Act* to withhold rent.

The Landlord had mentioned issuing the Tenant a Two Month Notice for Landlord's Use of Property during the hearing. I asked the Landlord about this. He testified that the Two Month Notice was served on the Tenant October 19, 2018. He testified that the effective date of the Two Month Notice was December 31, 2018. He advised that he never withdrew or cancelled the Two Month Notice. The Landlord advised that the Tenant was not given one month of free rent pursuant to the Two Month Notice.

The Landlord testified that \$3,400.00 in rent is currently outstanding for part of November rent and all of December and January rent. The Landlord asked to amend the Application to reflect the full amount.

Analysis

Section 44(1)(c) of the *Act* states that a tenancy ends if “the landlord and tenant agree in writing to end the tenancy”.

Pursuant to section 55(2)(d) of the *Act*, a landlord can apply for an order of possession of a rental unit if “the landlord and tenant have agreed in writing that the tenancy is ended”.

The Landlord submitted a copy of the Mutual Agreement. It is on the RTB form and includes all relevant information. It clearly states that the Tenant agrees to vacate the rental unit at 12 noon on December 13, 2018. It is signed by the Landlord and Tenant. I do not see any issue with the form or content of the Mutual Agreement. I am satisfied based on the undisputed testimony of the Landlord and Mutual Agreement submitted that the Tenant signed the Mutual Agreement and therefore agreed to vacate the rental unit December 13, 2018. The Tenant is bound by this agreement.

I acknowledge that the Notice and Two Month Notice were also served on the Tenant. These notices to end tenancy have no bearing on the Mutual Agreement. I accept the undisputed testimony of the Landlord that the Notice was served on the Tenant December 2, 2018, which was prior to the Mutual Agreement being signed. I accept the undisputed testimony of the Landlord that the Two Month Notice was served on the Tenant October 19, 2018, prior to the Mutual Agreement being signed. It was open to the parties to subsequently choose to end the tenancy pursuant to the Mutual Agreement and I am satisfied that they did so.

Pursuant to section 44(1)(c) of the *Act*, the tenancy ended December 13, 2018 based on the Mutual Agreement. 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.

The Landlord sought an Order of Possession effective two days after service on the Tenant. I find this to be appropriate in the circumstances. I acknowledge that I have issued the Landlord a monetary order for January rent below and that the Order of Possession will be effective prior to the end of January. However, given rent for January was due January 1, 2018, and given how late in the month it is, I am satisfied the Landlord is entitled to both an Order of Possession effective two days after service on the Tenant and a monetary order for January rent.

Given my decision in relation to the Mutual Agreement, I do not find it necessary to comment further on the Notice.

Based on the written tenancy agreement submitted, I accept that the Tenant is obligated to pay \$1,600.00 in rent per month and that this is due on the first day of each month. I accept the undisputed testimony of the Landlord that the Tenant failed to pay \$200.00 of November rent as well as all of December and January rent.

The Landlord testified that the Tenant was served with a Two Month Notice on October 19, 2018 with an effective date of December 31, 2018. The Landlord confirmed he never cancelled or withdrew that Two Month Notice. Pursuant to section 51(1) of the *Act*, the Tenant was entitled to receive one month's rent on or before the effective date of the Two Month Notice. In the circumstances, I am not satisfied that the Tenant owes the Landlord rent for December.

I do accept that the Tenant owes the Landlord \$200.00 of rent for November and all of January rent. Therefore, I accept that the Tenant currently owes the Landlord \$1,800.00. I find the Landlord is entitled to recover unpaid rent in the amount of \$1,800.00.

Given 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 compensation in the amount of \$1,900.00. I accept the undisputed testimony of the Landlord that he holds a \$800.00 security deposit. Pursuant to section 72(2)(b) of the *Act*, I authorize the Landlord to keep the \$800.00 security deposit. I issue the Landlord a monetary order for \$1,100.00.

Conclusion

The Landlord is issued an Order of Possession based on the Mutual Agreement. The Order of Possession is effective two days after service on the Tenant. This Order must be served on the Tenant. If the Tenant does not comply with the Order, it may be filed in the Supreme Court and enforced as an order of that Court.

Given my decision on the Mutual Agreement, I do not find it necessary to comment on the Notice.

The Landlord is entitled to recover \$1,800.00 in unpaid rent and is entitled to reimbursement for the \$100.00 filing fee. The Landlord is permitted to keep the \$800.00 security deposit. The Landlord is issued a monetary order for \$1,100.00. 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: January 18, 2019

Residential Tenancy Branch