



Dispute Resolution Services

Page: 1

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 December 8, 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 December 2, 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 participatory hearing given conflicting information in the materials submitted.

The Landlord and Tenant appeared at the hearing. The hearing process was explained to the parties who did not have questions when asked. The parties provided affirmed testimony.

The Tenant provided the correct spelling of her full legal name and this is reflected in the style of cause.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose in this regard.

The parties were 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 parties. 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

A written tenancy agreement had been submitted as evidence. It is between the Landlord and Tenant in relation to the rental unit. The tenancy started February 1, 2017 and was for a fixed term ending January 31, 2018. Rent at the start was \$1,550.00 per month due on the first day of each month. The agreement is signed by the Landlord and Tenant. It includes an Addendum with 10 terms. The Addendum states rent is due on the last day of the month prior to the month being paid.

The Landlord testified that the written agreement is accurate. She testified rent is due on the first day of each month and that the Addendum was old and should have been revised.

I note that the address of the rental unit is different on the Application, tenancy agreement and Notice. It is the street number that is different. The Landlord said all the addresses apply to the same rental unit and that the address on the Application is the civic address. I note that the address on the Application includes both street numbers with a slash between them.

The Tenant testified that the written tenancy agreement submitted is fraudulent and that it is not her signature on either the agreement or the Addendum. The Tenant submitted no evidence in support of this position.

The Tenant testified as follows in relation to the tenancy agreement between her and the Landlord. Rent was originally \$1,550.00 but lowered to \$1,400.00. The tenancy related to the rental unit address noted on the tenancy agreement. It started February 1, 2017 and was for a fixed term then became month-to-month. Rent is due on the first of each month, but the Landlord allowed her to pay rent late. The Tenant did not submit any evidence showing the Landlord repeatedly allowed her to pay rent late.

During the hearing, the Tenant took different positions about the rental unit address. At first, she disputed the address noted on the Application. She then agreed the tenancy

related to the rental unit address noted on the tenancy agreement. She later changed that position and disputed that the address on the written tenancy agreement was correct. The Tenant submitted no evidence in relation to the address of the rental unit.

The Landlord confirmed she agreed to a reduced rent of \$1,400.00 approximately one year ago. The Landlord testified that there were months when the Tenant paid rent late. She said the Tenant would tell her when it would be paid and she would say "okay". The Landlord testified that she did not give the Tenant permission to pay rent late. She denied that she ever told the Tenant this was acceptable or would be acceptable moving forward.

The Notice states the Tenant failed to pay \$1,400.00 in rent due December 1, 2018. It is addressed to the Tenant and refers to the rental unit address. It does not include the full civic address as on the Application but includes one of the street numbers. It is signed and dated by the Landlord. It has an effective date of December 12, 2018.

The Landlord testified that the Tenant paid \$1,300.00 in rent for November and December. She said she thought the amount noted on the Notice was supposed to be the entire rent amount, not what was outstanding. The Landlord testified that the Tenant failed to pay \$100.00 of the rent for December.

There was no issue that the Tenant received both pages of the Notice December 2, 2018.

The Landlord testified that the Tenant only paid \$1,300.00 in rent for November, December and January. She said \$300.00 is outstanding.

The Tenant acknowledged that she only paid \$1,300.00 in rent for November, December and January. She testified that the Landlord agreed to a \$100.00 rent reduction for November, December and January. The Tenant testified that the rent reduction in November was for yard maintenance, in December was due to a broken freezer and in January was for yard maintenance. The Tenant testified that this was a verbal agreement between her and the Landlord. She did not submit any evidence to support that the parties agreed to this. The Tenant did not point to any section of the *Residential Tenancy Act* (the "Act") or *Residential Tenancy Regulation* (the "Regulations") that authorized the \$100.00 rent reduction.

The Landlord denied that she agreed to the \$100.00 rent reduction as stated by the Tenant.

The Tenant submitted that she disputed the Notice by submitting evidence and appearing for this hearing.

I note that both parties suggested calling witnesses during the hearing. The Tenant sought to call a neighbour and said she could go get her. The Tenant confirmed the neighbour was not asked to be a witness on this hearing. I told the Tenant I would not allow her to go get her neighbour as the person needed to be aware of the hearing and prepared to be a witness for the hearing prior to hearing.

The Landlord sought to call someone in relation to whether she agreed to reduce rent by \$100.00. I understood her to say this person was present for a conversation or conversations between the parties. I asked the Landlord if the witness could really say that she did not agree to reduce rent and she acknowledged that the witness could not. I told the Landlord I did not see the relevance of this witness in the circumstances.

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.

...

I am satisfied the rental unit address is as the Landlord states it is and includes both street numbers with a forward slash between them. I find the Landlord is in the best position to know the civic address of the rental unit. The Tenant did not submit any evidence showing that the address is different than that stated on the Application. Further, I do not find this to be a significant issue. The civic address includes both street numbers. One of these numbers was used on the written tenancy agreement and the other used on the Notice. I am satisfied the address on the Notice is correct although incomplete compared to the civic address. I cannot see how the incomplete address on the Notice could have caused confusion. In the circumstances, I do not find it relevant that there is a difference in the rental unit address on the Application, tenancy agreement and Notice.

I accept that the written tenancy agreement and Addendum submitted are accurate and were signed by the Tenant. I do not accept that these are fraudulent. Nothing about the documents themselves causes me to question the authenticity of them or the Tenant's signature. Nothing about the testimony of the Landlord caused me to question her credibility. No evidence was submitted by the Tenant that causes me to question the credibility of the Landlord. No evidence was submitted by the Tenant to support her position that the tenancy agreement and Addendum are fraudulent. For example, the Tenant submitted no documentation showing her signature is other than that shown on the tenancy agreement and Addendum.

Regardless of whether the written tenancy agreement and Addendum are accurate, the parties agreed rent was originally \$1,550.00 and lowered to \$1,400.00 at some point. The parties agreed rent is due on the first day of each month.

The Tenant testified that the Landlord agreed to a further rent reduction of \$100.00 for November, December and January. The Landlord denied this. I do not accept that the Landlord did so based on the Tenant's testimony alone. I acknowledge that it is the Landlord who has the onus to prove her claim. I am satisfied she has done so by providing a written tenancy agreement showing rent was \$1,550.00 and acknowledging that this was reduced to \$1,400.00, both of which the Tenant agreed with. The Tenant submitted no evidence showing there was a verbal agreement between her and the Landlord that rent would be further reduced for November, December and January. I do not find the Tenant credible given her denial that she signed the written tenancy agreement and Addendum and my finding that these documents are accurate.

I am satisfied based on the written tenancy agreement and testimony of the parties that rent was \$1,400.00 due on the first day of each month. I note that whether the Landlord allowed the Tenant to pay rent late or not is irrelevant as the Tenant acknowledged only paying \$1,300.00 for November, December and January. This is not a matter dealing with late rent payments. It deals with non-payment of \$100.00 of rent for three months.

I accept that the Tenant did not pay \$100.00 of the rent owing for November, December and January as she acknowledged only paying \$1,300.00 each of these months. The Tenant did not point to any authority under the *Act* or *Regulations* that allowed her to withhold rent nor do I find she had such authority based on the testimony provided.

Given the Tenant did not have authority under the *Act* or *Regulations* to withhold rent, she was required to pay \$1,400.00 in rent by November 1, 2018 and December 1, 2018 under section 26(1) of the *Act*. Further, section 46(3) of the *Act* does not apply.

Given the Tenant only paid \$1,300.00 in rent for November and December, I accept that \$200.00 in rent was outstanding as of December 2, 2018 when the Notice was issued. Further, based on the testimony of both parties, I find \$300.00 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*. The parties agreed the Notice was served and received by the Tenant December 2, 2018.

The Notice includes the wrong rent amount owing. It states \$1,400.00 was owing December 1, 2018. The Landlord testified that this was an oversight. I do not find that this prejudiced the Tenant in any way. The Tenant did not raise this as an issue at the hearing. Further, it was clear from the testimony of the Tenant that she knew she withheld \$100.00 in rent for November and \$100.00 in December. I find the Tenant would have known the amount of rent outstanding as of December 2, 2018 when the Notice was issued. Further, the Tenant did not file an application for dispute resolution to dispute the Notice based on this issue.

Upon a review of the Notice, and considering the comments above, I find the Notice 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 on December 2, 2018 to pay or dispute it under section 46(4) of the *Act*. This is noted on page two of the Notice. The Tenant acknowledged she did not pay \$100.00 of the rent in November, December and January and that \$300.00 is currently outstanding.

The Tenant submitted that she disputed the Notice by submitting evidence and appearing at the hearing. She acknowledged she did not file her own dispute of the Notice within five days of receiving it. Submitting evidence on the Landlord's Application and appearing at the hearing does not constitute disputing the Notice under section 46(4) of the *Act*. The Tenant was required to file her own application for dispute resolution disputing the Notice. This is also stated on page two of the Notice.

Given the Tenant did not pay the outstanding rent or dispute the Notice, pursuant to section 46(5)(a) of the *Act*, the Tenant is conclusively presumed to have accepted that the tenancy ended December 12, 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 December 12, 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 that \$300.00 in rent is currently outstanding. I find the Landlord is entitled to monetary compensation in the amount of \$300.00 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 \$400.00. Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$400.00.

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 \$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.

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 31, 2019

Residential Tenancy Branch