



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, OPR-DR

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on March 06, 2019 (the “Application”). The Landlord sought an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 06, 2019 (the “Notice”).

The Landlord filed an amendment seeking to recover unpaid rent.

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

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

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 Tenant testified that Tenant T.J. held back the paperwork for this hearing and that Tenant T.J.’s boyfriend only brought some of the package to the Tenant the week of the hearing. She testified that Tenant T.J. moved out of the rental unit three weeks before the hearing. She said she received a copy of the Application and notice of hearing. She had not received the remainder of the hearing package or Landlord’s evidence. She said she was not aware the Landlord was seeking unpaid rent.

The Landlord testified that he served the hearing package, amendment and evidence on the Tenant and provided details in this regard.

I did not go into the service issue further as the Tenant confirmed she was fine with proceeding with the hearing. Further, the only evidence submitted by the Landlord was a copy of the Notice and a handwritten note about service of the Notice.

In relation to Tenant T.J., the Landlord testified that he served the hearing package, amendment and evidence on her by putting these in the mailbox of the rental unit on March 15, 2019. The Landlord said he knows the Tenants picked the packages up because he checked. The Landlord submitted no evidence of service.

Section 89 of the *Act* requires the hearing package to be served as follows:

89 (1) An application for dispute resolution...when required to be given to one party by another, must be given in one of the following ways:

(a) by leaving a copy with the person;

...

(c) by sending a copy by registered mail to the address at which the person resides...

(d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;

(e) as ordered by the director under section 71 (1)...

(2) An application by a landlord under section 55 [order of possession for the landlord]...must be given to the tenant in one of the following ways:

(a) by leaving a copy with the tenant;

(b) by sending a copy by registered mail to the address at which the tenant resides;

(c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;

(d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;

(e) as ordered by the director under section 71 (1)...

Putting the hearing package and amendment in the mailbox of the rental unit was not sufficient service as this is not a form of service permitted under section 89(1) of the *Act*. The Tenant suggested that Tenant T.J. held the paperwork for the hearing back and that Tenant T.J.'s boyfriend brought her some of the paperwork the week of the hearing. I understood the Tenant to be assuming Tenant T.J. held the paperwork back. I did not understand her to have knowledge of whether Tenant T.J. in fact received the hearing package and amendment. I do not find the Tenant's comments about this sufficient to deem Tenant T.J. served with the hearing package and amendment pursuant to section 71 of the *Act*.

The Landlord said he knew the Tenants picked up the packages because he checked. This is not sufficient evidence that Tenant T.J. in fact received the hearing package and amendment.

I am not satisfied Tenant T.J. was properly served with the hearing package and amendment and am not satisfied she in fact received these such that I would deem her to have received these pursuant to section 71 of the *Act*. Therefore, I have removed Tenant T.J. from the style of cause and will not issue an Order of Possession or Monetary Order against her.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered the 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 Landlord was continuously disruptive during the hearing. He continually interrupted me despite being told at the outset that he was not to interrupt either myself or the Tenant. He would not listen to my questions or explanations throughout the hearing. At one point, I had to mute the Landlord so that I could continue with the hearing and obtain the information I needed to decide the matter. The Landlord was still given the opportunity to make submissions and present relevant evidence after being muted while the Tenant testified.

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?

Background and Evidence

The Tenant testified that there was no written tenancy agreement and that the Landlord gave Tenant T.J. the written copy. She agreed there was a verbal tenancy agreement between the Landlord and Tenants. At first, the Tenant said she and Tenant T.J. were co-tenants. She later took the position that they were tenants in common.

The Landlord agreed there was no written tenancy agreement signed but that there was a verbal tenancy agreement between him and the Tenants.

Both parties agreed on the following. Tenant T.J. moved into the rental unit in October of 2018 and the Tenant moved in in November of 2018. This is a month-to-month tenancy. Rent is \$900.00 per month due on the first day of each month.

The Tenant testified that Tenant T.J. paid a \$225.00 security deposit and she paid a \$125.00 security deposit. The Landlord testified that he received \$350.00 as a deposit and said he is not seeking to keep this towards unpaid rent.

The Notice states the Tenants failed to pay \$1,400.00 in rent due March 01, 2019. It is addressed to both Tenants and relates to the rental unit. It is signed and dated by the Landlord. It has an effective date of March 15, 2019.

I asked the Landlord about service of the Notice. His testimony on this point was unclear and confusing. He testified that he served the Notice by placing both pages in the mailbox of the rental unit. He was unable to tell me what date he did this. I asked him about the handwritten note submitted about service of the Notice and he could not answer my questions in relation to this or explain its relevance.

The handwritten note states:

They received this date March 6/19 time 1:20 pm they refused to sign but they accepted the notice witness by M.N.

The note includes a signature that appears to be that of M.N.

The Tenant testified that she never received the Notice and does not know if Tenant T.J. ever received it.

The Landlord testified that Tenant T.J. paid \$450.00 for January and the Tenant only paid \$300.00. He testified that Tenant T.J. paid \$450.00 for February and the Tenant only paid \$200.00. He testified that no rent has been paid for March or April.

The Tenant testified that rent was paid in full for January. She testified that Tenant T.J. paid \$450.00 for February and she paid \$300.00. She agreed no rent had been paid for March or April. She acknowledged that she did not have authority under the *Act* to withhold rent.

The Tenant testified that she and Tenant T.J. were individually responsible for half of the monthly rent.

Both parties agreed that no rent was paid after March 06, 2019, the date the Notice was issued.

The Tenant acknowledged that she did not dispute the Notice. The Landlord testified that Tenant T.J. did not dispute the Notice.

Analysis

Policy Guideline 13 deals with co-tenants and states in part:

Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement. Co-tenants also have equal rights under the tenancy agreement.

Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.

...

"Tenants in common" sharing the same premises or portion of premises may enter into separate tenancy agreements with a landlord. A tenant in common has the same rights and obligations as an ordinary tenant with a separate tenancy, and is not responsible for debts or damages relating to the other tenancy.

In the absence of clear evidence of a tenancy in common, there is a presumption in law of a joint tenancy.

There is no written tenancy agreement in this matter. I do not find that there is clear evidence of a tenancy in common and therefore apply the presumption that this was a joint tenancy. Therefore, Tenant T.J. and the Tenant are jointly liable for any debts relating to the tenancy.

Pursuant to rule 6.6 of the Rules of Procedure, it is the Landlord who has the onus to prove his claim and prove he is entitled to an Order of Possession based on the Notice.

Section 46 of the *Act* allows landlords to end a tenancy where tenants have failed to pay rent. Section 46 states in part:

- 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.

...

- (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.

... [emphasis added]

I am not satisfied based on the evidence of the Landlord that the Notice was served on the Tenants in accordance with the *Act*.

The Landlord was unable to tell me when he served the Notice on the Tenants. The Landlord was unable to explain the relevance of the handwritten note submitted as evidence. The Landlord's testimony on service seems to contradict the handwritten note as the Landlord says the Notice was put in the mailbox at the rental unit, yet the note seems to indicate the Notice was served on the Tenants in person. M.N. did not attend the hearing to give evidence on this point or to clarify the note or its relevance. The Landlord submitted no further evidence of service of the Notice.

The Tenant testified that she never received the Notice and did not know if Tenant T.J. received the Notice.

In the circumstances, I am not satisfied that the Notice was served on the Tenants as required by section 46 of the *Act*. Therefore, the Landlord is not entitled to an Order of Possession based on the Notice.

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*. I have found the Tenants are joint tenants and therefore they are equally liable for paying the full amount of rent each month.

The parties agreed rent is \$900.00 per month due on the first day of each month. The parties disagreed on what rent had been paid for January and February of 2019. It is the Landlord who has the onus to prove the claim. The Landlord has submitted no evidence in support of his position about what rent has been paid for January and February. I do not accept that there is any rent owing for January given the conflicting testimony and lack of evidence on this point. Nor do I accept that the Tenant only paid \$200.00 for February given the conflicting testimony and lack of evidence on this point. I do accept that the Tenant owes \$150.00 in rent for February as she acknowledged this.

Both parties agreed the Tenants did not pay any rent for March or April. I find rent is owing for both months as the Tenant is still residing at the rental unit. The Tenant acknowledged that she had no authority under the *Act* to withhold rent.

I am satisfied the Tenants owe the Landlord \$1,950.00 in rent for February, March and April of 2019. I find the Landlord is entitled to monetary compensation in this amount and issue a Monetary Order pursuant to section 67 of the *Act*.

Conclusion

The Landlord is not entitled to an Order of Possession based on the Notice.

The Landlord is entitled to monetary compensation in the amount of \$1,950.00 and I award the Landlord a Monetary Order in this amount. 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: April 29, 2019

Residential Tenancy Branch