



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, OPRM-DR (Landlord)
 CNR, LAT, LRE, 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 the application April 06, 2019 (the “Tenant’s Application”). The Tenant applied to dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 22, 2019 (the “10 Day Notice”). The Tenant also sought authorization to change the locks to the rental unit, to suspend or set conditions on the Landlord’s right to enter the rental unit and more time to file the dispute of the 10 Day Notice.

The Landlords filed the application April 26, 2019 (the “Landlords’ Application”). The Landlords applied for an Order of Possession based on the 10 Day Notice, to recover unpaid rent 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 in this regard. The Landlord provided affirmed testimony.

The Landlords had submitted evidence prior to the hearing. The Tenant had not. I addressed service of the hearing package and evidence for the Landlords’ Application.

The Landlord testified that the hearing package and evidence were sent by registered mail to the Tenant May 02, 2019. The Landlords had submitted a copy of the customer receipt with Tracking Number 1 noted on it. I looked this up on the Canada Post website which shows the package was delivered and signed for by the Tenant on May 08, 2019.

The Landlord advised that she had not included the bank statements submitted in the package served on the Tenant.

Based on the undisputed testimony of the Landlord, evidence submitted and Canada Post website information, I find pursuant to section 71(2) of the *Residential Tenancy Act* (the “Act”) that the Tenant was sufficiently served with the hearing package and evidence. Based on the Canada Post website information, I find the Tenant was served in sufficient time to prepare for, and appear at, 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.

Given the bank statements were not served on the Tenant as required by rule 3.14 of the Rules of Procedure, I have not considered them.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenant.

Rule 7.3 of the Rules of Procedure states that an arbitrator can dismiss an Application for Dispute Resolution without leave to re-apply if a party fails to attend the hearing.

Given the Tenant did not appear at 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 evidence, make relevant submissions and ask relevant questions. I have considered the admissible documentary evidence and all oral testimony of the Landlord. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Landlords entitled to an Order of Possession based on the 10 Day Notice?
2. Are the Landlords entitled to recover unpaid rent?
3. Are the Landlords entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence. The tenancy started June 01, 2017 and is a month-to-month tenancy. Rent is \$950.00 per month due on the first day of each month. The Tenant paid a \$475.00 security deposit and \$200.00 pet damage deposit. The agreement is signed by the Landlords and Tenant.

The Landlord sought to keep the security deposit and pet damage deposit towards unpaid rent.

The 10 Day Notice states the Tenant failed to pay \$500.00 in rent due March 20, 2019. It is addressed to the Tenant and refers to the rental unit. It is signed and dated by the Landlord. It has an effective date of March 31, 2019.

The Landlord testified that she served both pages of the 10 Day Notice on the Tenant in person on March 22, 2019. The Landlords submitted a Proof of Service signed by a witness confirming service of the 10 Day Notice.

The Tenant disputed the 10 Day Notice on April 06, 2019.

The Landlord testified that the Tenant started paying rent late five or six months ago and so she told the Tenant half the rent could be paid on the first of each month and half could be paid on the 20th of each month. She testified that the Tenant failed to pay \$500.00 of March rent by March 20th and this is what is reflected on the 10 Day Notice.

The Landlord testified that the Tenant has not paid any rent since the 10 Day Notice was issued. The Landlord testified that the Tenant did not have authority under the *Act* to withhold rent.

The Landlord sought to amend the Application to include outstanding rent from April and May for a total of \$2,400.00.

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 landlords to end a tenancy when tenants fail 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.

...

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 written tenancy agreement and undisputed testimony of the Landlord, I accept that the Tenant was obligated to pay \$950.00 in rent per month. Based on the undisputed testimony of the Landlord, I accept that half of the rent was due on the first

of each month and half was due on the 20th of each month. I accept the undisputed testimony of the Landlord that the Tenant did not have a right to withhold rent under the *Act*. There is no evidence before me that she did. I find the Tenant was required to pay \$950.00 in rent for March by March 20th 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 Landlord that the Tenant failed to pay \$500.00 of March rent by March 20th.

Given the Tenant failed to pay rent as required, the Landlords were entitled to serve her 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(a) of the *Act*. Given the 10 Day Notice was served in person, I find the Tenant received it March 22, 2019. I also note the Tenant must have received the 10 Day Notice as she 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 March 22, 2019 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 10 Day Notice was issued.

The Tenant did dispute the 10 Day Notice on April 06, 2019. This was well outside the deadline for disputing the 10 Day Notice. Further, the Tenant did not attend the hearing to provide a basis for the dispute and therefore the Tenant's Application has been dismissed without leave to re-apply.

I find the Tenant did not pay the outstanding rent, or dispute the 10 Day Notice, within the time limit set out in section 46(4) of the *Act*. Therefore, pursuant to section 46(5) of the *Act*, the Tenant is conclusively presumed to have accepted that the tenancy ended April 01, 2019, the corrected effective date of the 10 Day Notice. The Tenant was required to vacate the rental unit by April 01, 2019.

I also note that the Tenant's dispute of the 10 Day Notice has been dismissed without leave to re-apply. The Landlords therefore would have been entitled to an Order of Possession pursuant to section 55(1) of the *Act* in any event.

I find the Landlords are entitled to an Order of Possession based on the 10 Day Notice and I issue the Landlords this Order. The Order is effective two days after service on the Tenant. I acknowledge that I have awarded the Landlords a monetary order for unpaid rent for May below. I find it appropriate to issue an Order effective two days after service on the Tenant given the date in the month.

As stated, I accept the undisputed testimony of the Landlord that the Tenant did not pay any rent after the 10 Day Notice was issued. I accept that \$2,400.00 in rent is currently outstanding. I allow the Landlords to amend the Landlords' Application to request the full amount pursuant to rule 4.2 of the Rules of Procedure. I find the Landlords are entitled to recover \$2,400.00 in unpaid rent.

As the Landlords were successful in this application, I award the Landlords reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Landlords are entitled to monetary compensation in the amount of \$2,500.00. The Landlords can keep the security deposit and pet damage deposit towards unpaid rent pursuant to section 72(2) of the *Act*. Pursuant to section 67 of the *Act*, I issue the Landlords a Monetary Order for the remaining amount of \$1,825.00.

Conclusion

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

The Landlords are 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 Landlords are entitled to monetary compensation in the amount of \$2,500.00. The Landlords can keep the security deposit and pet damage deposit towards unpaid rent. The Landlords are issued a Monetary Order for the remaining amount of \$1,825.00. 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: May 24, 2019

Residential Tenancy Branch