



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KASLO RENTALS INC. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPRM-DR (Landlord)
 CNR, FFT, 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 June 02, 2019 (the "Tenant's Application"). The Tenant applied to dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, for more time to file the dispute and for reimbursement for the filing fee.

The Landlord filed the application June 04, 2019 (the "Landlord's Application"). The Landlord applied for an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 24, 2019 (the "Notice") and to recover unpaid rent.

The Landlord submitted an amendment July 03, 2019 (the "Amendment"). The Amendment changed the monetary claim to \$10,800.00 which is unpaid rent for May, June and July.

C.S. and S.N. appeared at the hearing for the Landlord. Legal Counsel appeared with C.S. and S.N. Nobody appeared at the hearing for the Tenant.

The Landlord's Application named two landlords. Legal Counsel confirmed that only the Landlord needs to be named. I have removed the second landlord named from the style of cause.

I explained the hearing process to the parties who did not have questions in this regard. C.S. and S.N. provided affirmed testimony.

Legal Counsel advised that it is his understanding the Tenant does not live at the rental unit and that the Tenant has allowed others to live in the rental unit. Legal Counsel said he believes these other individuals are moving but does not know and that the Landlord still requires an Order of Possession for the rental unit.

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

Legal Counsel advised that the hearing package was sent by C.S. by registered mail. C.S. testified that he sent the hearing package and evidence by registered mail to the rental unit on June 13, 2019. C.S. provided Tracking Number 1 for this. He testified that the package was returned July 08, 2019.

The Landlord had submitted a photo of the returned package. The Landlord had also submitted the Canada Post website information for the package. The website information shows the package was sent June 13, 2019 and "redirected to recipient's new address" June 14, 2019. It shows notice cards were left June 17, 2019 and June 22, 2019. It shows the package was unclaimed and returned to the sender.

The photo of the returned package supports that it was sent to the Tenant at the rental unit with Tracking Number 1 on the package. It shows the package was unclaimed.

Legal Counsel advised that the Tenant has never provided the Landlord with an address other than the rental unit. Legal Counsel advised that there has been no formal documentation about the Tenant subletting the rental unit to others.

Legal Counsel pointed to an email submitted as evidence in relation to service of the Amendment. The email states that the Amendment was left at the rental unit with an adult on July 02, 2019.

As stated above, the Tenant's Application was filed June 02, 2019. The Tenant's Application states that he is a "current tenant" of the rental unit. The service address provided on the Tenant's Application is the rental unit address.

Based on the undisputed testimony of C.S., photo and Canada Post website information, I accept that the hearing package and evidence were sent to the Tenant at the rental unit by registered mail on June 13, 2019.

I am satisfied the Landlord was permitted to serve the Tenant at the rental unit for the following reasons. The Tenant has an ongoing tenancy agreement with the Landlord in relation to the rental unit. The Tenant has not ended this tenancy. The Tenant has not provided the Landlord with a different address. There is no formal documentation in relation to the Tenant subletting the rental unit. The Tenant's Application states that the Tenant is a current tenant of the rental unit and includes the rental unit address as the Tenant's service address.

Further, the Canada Post information submitted shows the package was re-directed to the recipient's new address.

In the circumstances, pursuant to section 71(2)(c) of the *Residential Tenancy Act* (the "Act"), I am satisfied the Tenant was sufficiently served with the hearing package and evidence. I also find that the Tenant was served in sufficient time prior to the hearing.

I also note that the Tenant would have been aware of the hearing as the Tenant's Application was scheduled for the same date and time.

I understand from the Landlord's materials that the Affidavit of S.N. was served with the Amendment although this was not brought to my attention during the hearing. Legal Counsel pointed to an email submitted in relation to service of the Amendment package. Based on the email, I accept that the package was left at the rental unit with an adult on July 02, 2019. As stated above, I find the Landlord was permitted to serve the Tenant at the rental unit. I find pursuant to section 71(2)(c) of the *Act* that the Tenant was sufficiently served with the Affidavit of S.N.

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 (the "Rules") 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.

C.S., S.N. and Legal Counsel were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered the

documentary evidence and all oral testimony. 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?

Background and Evidence

A written tenancy agreement was submitted as evidence. The tenancy started June 01, 2018 and was for a fixed term ending January 31, 2019. It then became a month-to-month tenancy. Rent is \$3,600.00 per month due on or before the first day of each month. The Tenant paid a security deposit of \$1,800.00. The agreement is signed by the Tenant and for the Landlord.

Legal Counsel advised that the Landlord is seeking to keep the security deposit towards unpaid rent.

The Notice states the Tenant failed to pay \$3,600.00 in rent due May 01, 2019. It is addressed to the Tenant and refers to the rental unit. It is signed and dated on behalf of the Landlord. It has an effective date of June 07, 2019.

C.S. testified that he observed his colleague post both pages of the Notice on the door of the rental unit May 24, 2019. The Landlord had submitted a photo of this. The Landlord had also submitted a Proof of Service which I have not considered as Legal Counsel advised that it was not served on the Tenant as evidence for this hearing.

Legal Counsel advised that the Tenant did not pay May rent and this is what is reflected on the Notice. S.N. testified that the Tenant has not paid any rent since the Notice was issued. The Affidavit of S.N. states that the Tenant did not pay rent for May, June or July.

Legal Counsel advised that the Tenant did not have authority under the *Act* to withhold rent. The Tenant's Application refers to repairs made to the rental unit. Legal Counsel confirmed there were never emergency repairs made to the rental unit. The Affidavit of S.N. states that she is unaware of the Tenant having authority under the *Act* to withhold rent.

The parties confirmed May, June and July rent is currently outstanding for a total of \$10,800.00. This is reflected in the Amendment. Legal Counsel also sought to amend the Landlord's Application pursuant to rule 4.2 of the Rules. The parties relied on the Affidavit of S.N. submitted and the tenancy agreement in relation to unpaid rent.

Legal Counsel sought an Order of Possession effective two days after service on the Tenant.

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 a tenant has 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...

Section 55(1) of the *Act* requires an arbitrator 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, I accept that the Tenant was obligated to pay \$3,600.00 in rent per month by the first of each month. Based on the Affidavit of S.N., I accept that the Tenant did not have a right to withhold rent under the *Act*. There is no evidence before me that he did. I find the Tenant was required to pay \$3,600.00 in rent by May 01, 2019 under section 26(1) of the *Act* and that section 46(3) of the *Act* does not apply.

Based on the Affidavit of S.N., I accept that the Tenant failed to pay May rent. Given the Tenant failed to pay rent as required, the Landlord was entitled to serve him with the Notice pursuant to section 46(1) of the *Act*.

Based on the undisputed testimony of C.S. and photo submitted, I accept that both pages of the Notice were posted to the door of the rental unit May 24, 2019. As stated above, the Landlord was permitted to serve the Tenant at the rental unit. I find pursuant to section 71(2)(c) of the *Act* that the Notice was sufficiently served. I also find this given the Tenant disputed the Notice and therefore must have received it. Pursuant to section 71(2)(b) of the *Act*, and considering section 90 of the *Act*, I find the Tenant was served with the Notice as of May 27, 2019.

Upon a review of the 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 Notice on May 27, 2019 to pay or dispute it under section 46(4) of the *Act*. Given the dates involved, the Tenant had until June 03, 2019 to dispute the Notice. The Tenant did dispute the Notice; however, he failed to attend the hearing and his dispute has been dismissed.

Based on the Affidavit of S.N., I accept that the Tenant did not pay rent in June or July. Therefore, I find the Tenant did not pay the outstanding rent within five days of receiving the Notice.

I find the Landlord is entitled to an Order of Possession pursuant to section 55(1) of the *Act* as I have dismissed the Tenant's dispute and found the Notice complies with section 52 of the *Act*. I award the Landlord an Order of Possession effective two days after service on the Tenant.

I acknowledge that I have awarded the Landlord a monetary order for unpaid rent for July. I find it appropriate to issue an Order of Possession effective two days after

service on the Tenant given rent is due on the first day of each month and given the current date in the month.

Based on the Affidavit of S.N., I have accepted that the Tenant did not pay May, June or July rent. I accept that the Tenant owes \$10,800.00 in rent. I allow the Landlord to amend the Landlord's Application to reflect this amount pursuant to rule 4.2 of the Rules. The Landlord is entitled to recover \$10,800.00.

As 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 monetary compensation in the amount of \$10,900.00. Pursuant to section 72(2) of the *Act*, the Landlord can keep the \$1,800.00 security deposit. Pursuant to section 67 of the *Act*, I award the Landlord a Monetary Order in the amount of \$9,100.00.

Conclusion

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

The Landlord is 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 Landlord is entitled to monetary compensation in the amount of \$10,900.00. The Landlord can keep the \$1,800.00 security deposit. I award the Landlord a Monetary Order in the amount of \$9,100.00. 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: July 19, 2019

Residential Tenancy Branch