



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes 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 September 25, 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 September 15, 2019 (the "Notice"). The Landlord also sought to recover unpaid rent.

The Landlord and Tenants appeared at the hearing. The Landlord called a Witness at the hearing. The Witness was not involved in the conference call until required.

The Application originally named a tenant C.R.J. Both parties agreed C.R.J. should be removed from the Application and Tenant C.B. should be added. This change is reflected in the style of cause. Tenant K.S.'s full legal name has also been included in the style of cause.

The Tenants advised at the outset that they are not living at the rental unit, but their possessions are still at the rental unit. The Landlord still sought an Order of Possession.

I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The Tenants alleged that the individual appearing at the hearing was not the Landlord but someone else. After being affirmed, the Landlord confirmed his full legal name as shown in the style of cause.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Tenants confirmed receipt of the hearing package although Tenant K.S. said it was sent to the wrong address. Tenant K.S. confirmed they received the hearing package and had time to review it and prepare for the hearing. Given this, I was satisfied with service of the hearing package.

The Tenants testified that they did not receive the Landlord's evidence. The Landlord testified that the evidence was sent with the hearing packages. The Landlord provided tracking numbers for these packages. The Landlord referred to photos being taken in relation to service. There are no photos before me relating to service of the evidence for this hearing. I do not find the tracking numbers of assistance in determining whether the evidence was served on the Tenants as the Tenants acknowledged receiving the hearing packages. The tracking numbers do not relate to the contents of the packages. There is no further evidence before me about the contents of the packages.

It is the Landlord who has the onus to prove service of his evidence. The parties gave conflicting testimony on this point. I am not satisfied the evidence was served.

I heard the parties on whether the evidence should be admitted or excluded if I am not satisfied of service. I exclude the evidence. I find it would be prejudicial to the Tenants to consider evidence when I am not satisfied it was served on them as required by the Rules of Procedure (the "Rules").

The Landlord testified that he did not receive the Tenants' evidence. The Tenants acknowledged they did not serve their evidence on the Landlord. I heard the parties on whether the evidence should be admitted or excluded. I exclude the evidence. I find it would be prejudicial to the Landlord to consider evidence that was not served on him as required by the Rules.

The Tenants said at the outset that there is a no contact order in place in relation to the parties. I understood the Landlord to dispute that there is a no contact order or dispute that it applied in the circumstances. I had no further evidence before me about a no contact order in relation to the parties. I told the parties I have no knowledge of a no contact order, it is their responsibility to ensure they are abiding by such orders and I will assume they are abiding by such orders. I told the parties I would not hear on this issue further.

I note that the parties had to be reminded throughout the hearing not to interrupt, not to argue with each other and not to make comments while the other party was speaking.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all oral testimony of the parties. I will only refer to 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?

Issue 1: Is the Landlord entitled to an Order of Possession based on the Notice?

During the hearing, I raised the possibility of settlement pursuant to section 63(1) of the *Residential Tenancy Act* (the “Act”) which allows an arbitrator to assist the parties to settle the dispute.

I explained the following to the parties. Settlement discussions are voluntary. If they chose not to discuss settlement that was fine, I would hear the matter and make a final and binding decision in the matter. If they chose to discuss settlement and did not come to an agreement that was fine, I would hear the matter and make a final and binding decision in the matter. If they did come to an agreement, I would write out the agreement in my written decision and make any necessary orders. The written decision would become a final and legally binding agreement and neither party could change their mind about it later.

The parties did not have questions about the above. The parties agreed to discuss settlement.

The parties were able to agree on ending the tenancy. However, the parties could not agree on the issue of unpaid rent. Therefore, it was agreed that the issue of an Order of Possession would be dealt with by way of settlement agreement and I would decide the issue of unpaid rent.

Prior to ending the hearing, I reviewed the terms of the settlement agreement with the parties. I told the parties I would issue an Order of Possession.

Settlement Agreement

The Landlord and Tenants agree as follows:

1. The Notice is cancelled.
2. The tenancy will end and the Tenants will vacate the rental unit no later than 4:00 p.m. on November 13, 2019.
3. All rights and obligations of the parties under the tenancy agreement will continue until the tenancy ends at 4:00 p.m. on November 13, 2019.

This agreement is fully binding on the parties and is in full and final satisfaction of the dispute regarding whether the Landlord is entitled to an Order of Possession based on the Notice.

The Landlord is issued an Order of Possession for the rental unit which is effective at 4:00 p.m. on November 13, 2019. If the Tenants fail to vacate the rental unit in accordance with the settlement agreement set out above, the Landlord must serve the Tenants with this Order. If the Tenants fail to vacate the rental unit in accordance with the Order, the Order may be enforced in the Supreme Court as an order of that Court.

Issues 2: Is the Landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

The parties disagreed about the tenancy agreement in this matter.

The Landlord agreed as follows in relation to the tenancy agreement. It is a written agreement between the parties in relation to the rental unit. The tenancy started May 01, 2019 and is a month-to-month tenancy. Rent is \$2,700.00 per month due on the first day of each month. The Tenants paid a \$1,300.00 security deposit. The agreement is signed by all three parties.

The Tenants testified that the Landlord's testimony about the tenancy agreement is not true. The Tenants testified as follows in relation to the tenancy agreement. It is a written agreement between the parties in relation to the rental unit. The tenancy started May 01, 2019 and is a month-to-month tenancy. Rent is \$1,800.00 per month due on the first day of each month. The Tenants paid a \$900.00 security deposit. The agreement is signed by all three parties.

In response, the Landlord testified that there are two written tenancy agreements between the parties. He testified that the Tenants originally rented the upper part of the

house and the agreement referred to by the Tenants was signed. The Landlord testified that the Tenants then wanted further occupants to move into the rental unit, so the second written tenancy agreement was signed for the higher rent amount.

In response, the Tenants denied that there are two written tenancy agreements between the parties.

The Landlord testified as follows in relation to unpaid rent. The Tenants owe \$2,700.00 in rent each month. The Tenants did not pay any rent for August, September, October or November. The Tenants pay rent in cash. He has only issued receipts once or twice for payments. He does not keep a rent ledger or other accounting of rent paid. The Tenants did not have authority under the *Act* to withhold rent.

The Landlord called the Witness; however, the only question he asked him related to settlement on the unpaid rent issue which the Tenants had already stated they would not agree on. The Tenants asked the Witness a question that I do not find relevant to the issue before me.

The Tenants testified as follows in relation to unpaid rent. They owe \$1,800.00 in rent each month. They paid rent for August and September on August 23, 2019 and September 04, 2019. They have rent receipts for these months. They did not pay for October or November. They did not have authority under the *Act* to withhold rent for October or November. Tenant C.B. testified that he paid someone other than the Landlord \$700.00 in August; however, he did not get a receipt for this.

I understood both parties to agree that a third party lives in the lower portion of the rental unit. The Landlord's position is that the Tenants are responsible for paying \$2,700.00 for the entire house. The Tenants' position is that the third party pays rent separately.

Analysis

Section 7(1) of the *Act* states:

7 (1) If a...tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

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*.

Pursuant to rule 6.6 of the Rules, it is the Landlord as applicant who has the onus to prove he is entitled to the amount claimed.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

The parties gave conflicting testimony about the tenancy agreement in this matter. I have no further admissible evidence before me about this issue. I am not satisfied rent is \$2,700.00 in the absence of further evidence to support the Landlord's testimony on this point. I can only be satisfied that rent is \$1,800.00 as stated by the Tenants.

The parties agreed rent is due by the first day of each month.

The parties gave conflicting testimony about what rent was paid and not paid. I have no further admissible evidence before me about this issue. I am not satisfied the Tenants failed to pay rent for August, September, October and November in the absence of further evidence to support the Landlord's testimony on this point. I can only be satisfied that the Tenants failed to pay October and November rent as the Tenants acknowledged this.

The parties agreed that the Tenants had no authority under the *Act* to withhold rent.

Pursuant to the tenancy agreement and section 26(1) of the *Act*, the Tenants were required to pay rent for October and November. The Tenants owe the Landlord \$1,800.00 for October and \$780.00 for November. I have calculated November rent as follows: $\$1,800.00 / 30 = \$60.00 \times 13 = \$780.00$.

The Tenants owe the Landlord \$2,580.00 in unpaid rent. Pursuant to section 67 of the *Act*, I issue the Landlord a Monetary Order in this amount.

Conclusion

Pursuant to the settlement agreement, the Landlord is issued an Order of Possession for the rental unit which is effective at 4:00 p.m. on November 13, 2019. If the Tenants fail to vacate the rental unit in accordance with the settlement agreement set out above, the Landlord must serve the Tenants with this Order. If the Tenants fail to vacate the rental unit in accordance with the Order, the Order may be enforced in the Supreme Court as an order of that Court.

The Landlord is entitled to monetary compensation in the amount of \$2,580.00 and I issue the Landlord a Monetary Order in this amount. This Order must be served on the Tenants and, if the Tenants do 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: November 07, 2019

Residential Tenancy Branch