



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNRL, OPC, OPR

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlords on September 24, 2019 (the “Application”). The Landlords applied as follows:

- For an Order of Possession based on a One Month Notice to End Tenancy for Cause dated March 03, 2019 (the “One Month Notice”);
- For an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 03, 2019 (the “Notice”);
- To recover unpaid rent; and
- Reimbursement for the filing fee.

The Landlord attended the hearing. Nobody attended for the Tenant. The Landlord confirmed the names of the Landlords which are reflected in the style of cause.

The Landlord confirmed this matter falls under the *Residential Tenancy Act* (the “Act”). The Landlord advised that the rental unit is a manufactured home but that Landlord P.C. owns the home and the Tenant rents the home. The Landlord confirmed she acts as Landlord P.C.’s agent in relation to the tenancy and confirmed she should be named on the Application and in the style of cause.

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

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

The Landlord testified that the hearing package and evidence were sent by registered mail to the rental unit on September 19, 2019. The Landlord provided Tracking Number 1. I looked this up on the Canada Post website which shows the package was sent September 26, 2019. It shows the package was delivered and signed for by the Tenant October 07, 2019.

Based on the undisputed testimony of the Landlord and Canada Post website information, I find the Tenant was served with the hearing package and evidence in accordance with sections 88(c) and 89(1)(c) of the *Act*. I also find the hearing package and evidence were served in sufficient time to allow the Tenant to prepare for, and appear at, the hearing.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Landlord was 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 Landlord. I will only refer to the evidence I find relevant in this decision.

I note that a tenant on a different matter called into the hearing shortly after it started. The tenant confirmed he was calling on a different file number and was told to hang up and call into the correct hearing.

Issues to be Decided

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

Background and Evidence

A written tenancy agreement was submitted as evidence. It is between Landlord P.C. and the Tenant in relation to the rental unit. The tenancy started January 01, 2019 and is a month-to-month tenancy. Rent is \$1,100.00 per month. The Landlord confirmed

rent is due on the first day of each month. The Tenant paid a \$497.50 security deposit. The agreement is signed by an agent for the Landlord and the Tenant.

The Notice states that the Tenant failed to pay \$105.00 that was due March 01, 2019. The Notice is addressed to the Tenant and refers to the rental unit. It is signed and dated by an agent for Landlord P.C. It has an effective date of March 13, 2019.

The Landlord testified that P.W. served the Notice for Landlord P.C. I allowed the Landlord to call P.W. into the hearing as a witness.

P.W. provided affirmed testimony. P.W. testified that he served both pages of the Notice on the Tenant by attaching it to the front of the rental unit by the entrance. P.W. could not recall what date he did this; however, he testified that he would have served the Notice the same date he completed it.

The Landlord testified that the Tenant was short \$105.00 in rent every month starting in March of 2019. The Landlord testified that the Tenant never paid the outstanding rent. The Landlord testified that the next rent payment received from the Tenant after the Notice was issued was received April 24, 2019. The Landlord advised that she is only seeking to recover \$735.00 in unpaid rent for the \$105.00 not paid between March to September.

The Landlord testified that the Tenant did not dispute the Notice. The Landlord testified that the Tenant did not have authority under the *Act* to withhold rent.

The Landlord referred to a letter and cheque submitted. The letter is dated February 25, 2019. It states that the Tenant's government cheque came in and is \$995.00 not the \$1,100.00 the Tenant said it would be. It states that \$105.00 is owing for March rent. It includes a copy of a cheque dated February 20, 2019 made out to Landlord P.C. for \$995.00.

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 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.

...

Based on the undisputed testimony of the Landlord and written tenancy agreement, I accept that the Tenant was required to pay \$1,100.00 in rent per month. Based on the undisputed testimony of the Landlord, I accept that the Tenant had to pay rent by the first day of each month. Based on the undisputed testimony of the Landlord, I accept that the Tenant did not have authority under the *Act* to withhold rent for the months of March to September. There is no evidence before me that the Tenant did. I find the Tenant was required to pay \$1,100.00 by the first of each month for March to September under section 26(1) of the *Act* and that section 46(3) of the *Act* does not apply.

Based on the undisputed testimony of the Landlord, February 25th letter and cheque submitted, I accept that the Tenant failed to pay \$105.00 of the rent each month from March to September. Given the Tenant failed to pay rent as required, the Landlords were entitled to serve her with the Notice pursuant to section 46(1) of the *Act*.

Based on the undisputed testimony of P.W., I accept that the Notice was served on the Tenant in accordance with section 88(g) of the *Act*. I also accept that this was done March 03, 2019. Pursuant to section 90(c) of the *Act*, the Tenant is deemed to have received the Notice March 06, 2019.

I have reviewed the Notice and 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 March 06, 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 dispute the Notice. There is no evidence before me that the Tenant did.

I accept the undisputed testimony of the Landlord that the Tenant never paid the outstanding rent noted on the Notice. I also accept the undisputed testimony of the Landlord that the next payment received from the Tenant after the Notice was issued was on April 24, 2019.

Given the Tenant did not pay the outstanding amount or dispute the Notice by March 11, 2019, I find pursuant to section 46(5)(a) of the *Act* that the Tenant is conclusively presumed to have accepted that the tenancy ended March 16, 2019, the corrected effective date of the Notice. The Tenant was required under section 46(5)(b) of the *Act* to vacate the rental unit by March 16, 2019.

The Landlords are entitled to an Order of Possession. Pursuant to section 55 of the *Act*, I issue the Landlords an Order of Possession effective two days after service on the Tenant.

As noted, I accept that the Tenant failed to pay \$105.00 of the rent each month from March to September. I have also accepted that the Tenant did not have authority under the *Act* to withhold rent. Therefore, the Landlords are entitled to recover \$735.00 in unpaid rent.

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

The Landlords are therefore entitled to monetary compensation in the amount of \$835.00. I issue the Landlords a Monetary Order in this amount pursuant to section 67 of the *Act*.

Given the above decision, I decline to consider the One Month Notice. I also note that the One Month Notice does not have an effective date and therefore does not comply with section 52 of the *Act* and is not an effective notice to end tenancy.

Conclusion

The Landlords are 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 Landlords are entitled to a Monetary Order in the amount of \$835.00. 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: December 03, 2019

Residential Tenancy Branch