



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDCL, MNRL, OPR

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on October 31, 2019 (the “Application”). The Landlord applied as follows:

- For compensation for monetary loss or other money owed;
- To recover unpaid rent;
- For an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 11, 2019 (the “Notice”); and
- Reimbursement for the filing fee.

The Agent attended the hearing for the Landlord. The Tenant attended the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

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

The Tenant confirmed receipt of the hearing package. The Tenant testified that he did not receive the Landlord’s evidence. The only evidence submitted by the Landlord was the Notice, a registered mail receipt for the Notice and an authorization letter in relation to the Agent representing the Landlord. The Agent testified that the Notice and authorization letter were served on the Tenant. I admit the Notice regardless of service of it as evidence because the Tenant acknowledged receiving a copy of it previously during the hearing. The other two pieces of evidence are not necessary for my decision and I have not relied on them.

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

Issues to be Decided

1. Is the Landlord entitled to compensation for monetary loss or other money owed?
2. Is the Landlord entitled to recover unpaid rent?
3. Is the Landlord entitled to an Order of Possession based on the Notice?
4. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The parties agreed there is an oral tenancy agreement between the Landlord and Tenant in relation to the rental unit. The Tenant testified that the tenancy started 15 or 16 years ago. The Agent did not know when the tenancy started and testified that the Landlord purchased the rental unit 10 years ago and the Tenant was already there. The Tenant testified that the tenancy is a year-to-year tenancy. The Agent testified that the tenancy is a month-to-month tenancy. The parties agreed rent is \$1,111.00 due on the first day of each month.

The Notice states that the Tenant failed to pay \$2,222.00 in rent that was due October 01, 2019. The Notice is addressed to the Tenant and refers to the rental unit. It is signed and dated by the Agent. It has an effective date of October 16, 2019. The Tenant did not take issue with the form or content of the Notice.

The Agent testified that the Notice was sent to the rental unit by registered mail October 11, 2019. The Agent testified that both pages of the Notice were sent. The Agent provided Tracking Number 1.

I looked Tracking Number 1 up on the Canada Post website which shows the Tenant signed for the package October 18, 2019. The Tenant agreed he signed for the package October 18, 2019 and that the Notice was inside. The Tenant could not recall if the Notice included both pages.

The Tenant testified that he did not dispute the Notice.

The Agent testified that the Tenant did not pay September or October rent and this is reflected on the Notice.

At first, the Tenant testified that he knows he did not pay September rent and told the Landlord he only had \$800.00 for October rent. The Tenant testified about August rent. The Tenant later stated that he thought he paid September rent. The Tenant confirmed he did not pay rent for October, November or December. The Tenant did not take the position that he had authority under the *Act* to withhold rent. The Tenant testified that he did not have the money to pay rent. The Tenant testified that he pays rent by cheque.

The Agent testified that the September rent cheque was “NSF”.

Analysis

Section 26(1) of the *Residential Tenancy Act* (the “*Act*”) requires a tenant 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 when a tenant fails 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 agreement of the parties, I find the Tenant is required to pay \$1,111.00 in rent by the first day of each month pursuant to the oral tenancy agreement between the Landlord and Tenant. Given the testimony of the Tenant, I find the Tenant did not have authority under the *Act* to withhold rent for September or October. Therefore, I find the Tenant was required to pay \$1,111.00 in rent by September 01, 2019 for September rent and October 01, 2019 for October rent under section 26(1) of the *Act* and that section 46(3) of the *Act* does not apply.

I accept that the Tenant did not pay September rent. The Landlord should have submitted evidence of this such as documentation showing the September rent was returned due to insufficient funds. However, the Tenant acknowledged that he stopped paying rent at some point. I do not find the Tenant's testimony about when he stopped paying rent particularly reliable as the Tenant first agreed he did not pay September rent and then changed his testimony about this. Further, the Tenant seemed unsure about whether he paid September rent given his testimony on this point and words used. In the circumstances, I prefer the testimony of the Agent on this point and am satisfied the Tenant did not pay September or October 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 testimony of the Agent, Tracking Number 1, Canada Post website information and testimony of the Tenant, I find the Notice was served on the Tenant by registered mail in accordance with section 88(c) of the *Act*. Based on the Canada Post website information and testimony of the Tenant, I accept that the Tenant received the Notice October 18, 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 October 18, 2019 to pay or dispute it under section 46(4) of the *Act*.

Based on the testimony of the Tenant, I find he did not dispute the Notice.

Based on the testimony of the Tenant, I find he did not pay rent for October, November or December and therefore find he did not pay the outstanding amount of \$2,222.00 within five days of receiving the Notice on October 18, 2019.

Given the Tenant did not dispute the Notice or pay the outstanding amount within five days of receiving the Notice, I find pursuant to section 46(5)(a) of the *Act* that the Tenant is conclusively presumed to have accepted that the tenancy ended October 28, 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 October 28, 2019.

The Landlord is entitled to an Order of Possession. The Agent asked that the Order of Possession be effective December 31, 2019 and I issue the Order of Possession with this effective date pursuant to section 55 of the *Act*.

I have accepted that the Tenant did not pay rent for September to December. I find the Tenant was required to do so pursuant to section 26(1) and 57(3) of the *Act* as the Tenant is still living in the rental unit. Given the testimony of the Tenant, I do not find that he had authority under the *Act* to withhold rent for September to December. The Landlord is entitled to compensation for rent for these months which totals \$4,444.00.

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

The Landlord is therefore entitled to monetary compensation in the amount of \$4,544.00. I issue the Landlord a Monetary Order in this amount pursuant to section 67 of the *Act*.

Conclusion

The Landlord is entitled to an Order of Possession effective at 1:00 p.m. on December 31, 2019. 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 a Monetary Order in the amount of \$4,544.00. 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 20, 2019

Residential Tenancy Branch