



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MT (Tenant)
FFL, MNDCL-S, MNRL-S, OPR (Landlord)

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 November 26, 2019 (the “Tenant’s Application”). The Tenant applied to dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 15, 2019 (the “10 Day Notice”). The Tenant sought more time to file the dispute.

The Landlord filed the application December 13, 2019 (the “Landlord’s Application”). The Landlord applied for an Order of Possession based on the 10 Day Notice, for compensation for monetary loss or other money owed, to recover unpaid rent, to keep the security deposit and for reimbursement for the filing fee.

The Landlord appeared at the hearing with her father for support, J.S. to assist, K.R. as a witness and J.W. as a witness. The witnesses were outside the room until required. I did not hear from K.R. as his evidence was not relevant to the issues before me.

The Tenant did not appear at the hearing which lasted 33 minutes.

The Landlord provided the correct rental unit address which is reflected on the front page of this decision. I explained the hearing process to the Landlord and others who did not have questions when asked. The Landlord and J.W. provided affirmed testimony.

The Landlord submitted evidence prior to the hearing. The Tenant submitted a copy of the 10 Day Notice. I addressed service of the hearing package and evidence for the Landlord's Application.

The Landlord testified that the hearing package and evidence were sent to the rental unit by registered mail on December 18, 2019. The Landlord had submitted a customer receipt with Tracking Number 1 on it. I looked this up on the Canada Post website which shows the package was delivered and signed for December 23, 2019 by A.O.

Based on the undisputed testimony of the Landlord, customer receipt 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 *Residential Tenancy Act* (the "Act"). Based on the undisputed testimony of the Landlord and Canada Post website information, I accept that the package was served December 18, 2019, in sufficient time for the Tenant to prepare for, and appear at, 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.

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 insufficient evidence before me as to the basis for the Tenant's Application. In the absence of further 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 documentary evidence and oral testimony of the Landlord and J.W. 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 10 Day Notice?
2. Is the Landlord entitled to compensation for monetary loss or other money owed?
3. Is the Landlord entitled to recover unpaid rent?
4. Is the Landlord entitled to keep the security deposit?
5. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence. The tenancy started October 01, 2019 and is for a fixed term ending October 01, 2020. Rent is \$1,000.00 per month due on the first day of each month. The Tenant paid a security deposit of \$500.00. The agreement is signed by the Landlord and Tenant.

The 10 Day Notice states the Tenant failed to pay \$1,000.00 in rent due November 01, 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 November 29, 2019.

A Proof of Service was submitted. It states the 10 Day Notice was served on the Tenant in person November 15, 2019. It states J.W. served the 10 Day Notice. It is signed by the Landlord as a witness to service. It is also signed by J.W.

J.W. testified that he served the 10 Day Notice on the Tenant in person November 15, 2019. J.W. confirmed he signed the Proof of Service.

The Landlord confirmed the accuracy of the Proof of Service and confirmed both pages of the 10 Day Notice were served on the Tenant.

The Tenant disputed the 10 Day Notice November 26, 2019.

The Landlord testified that the Tenant did not pay November rent which is reflected on the 10 Day Notice. The Landlord testified that the Tenant has not paid rent since October and currently owes for November, December and January for a total of \$3,000.00. The Landlord testified that the Tenant paid October rent in cash and was issued a receipt which is in evidence. The Landlord also relied on text messages submitted in evidence to show the Tenant did not pay rent.

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

The Landlord sought to recover \$4,000.00 in outstanding rent for November to February. I told the Landlord I cannot award her unpaid rent for a future month. The request for February rent is dismissed with leave to re-apply. This does not extend any time limits set out in the *Act*.

The Landlord submitted a receipt for October rent and text messages between her and the Tenant supporting that the Tenant did not pay November or December rent as required.

Analysis

Section 26(1) of 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.

...

Section 55(1) of the *Act* requires an arbitrator to issue an Order of Possession when a tenant disputes 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 the Tenant was obligated to pay \$1,000.00 in rent per month by the first of each month. Based on the undisputed testimony of the Landlord, I accept the Tenant did not have authority under the *Act* to withhold rent. There is no evidence before me that the Tenant did. I find the Tenant was required to pay \$1,000.00 in rent by November 01, 2019 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, text messages and in part on the October rent receipt, I accept that the Tenant did not pay November rent. Given the Tenant failed to pay rent as required, the Landlord was entitled to serve the Tenant with the 10 Day Notice pursuant to section 46(1) of the *Act*.

Based on the Proof of Service, undisputed testimony of J.W. and undisputed testimony of the Landlord, 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 November 15, 2019. I also note the Tenant must have received the 10 Day Notice as she disputed it and submitted a copy of 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 November 15, 2019 to pay or dispute it under section 46(4) of the *Act*.

Based on the undisputed testimony of the Landlord, and in part on the October rent receipt and text messages, I accept that the Tenant has not paid any rent since October.

The Tenant disputed the 10 Day Notice November 26, 2019. This is past the deadline for disputing the 10 Day Notice. The Tenant sought more time to file the dispute; however, the Tenant failed to attend the hearing and the Tenant's Application has been dismissed without leave to re-apply. Therefore, the Tenant has not been granted more time to file the dispute.

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 November 29, 2019, the effective date of the 10 Day Notice. The Tenant was required to vacate the rental unit by November 29, 2019.

I note that, even if the Tenant had disputed the 10 Day Notice within the five-day time limit, the dispute has been dismissed without leave to re-apply. The Landlord therefore would have been entitled to an Order of Possession pursuant to section 55(1) of the *Act* in any event.

I find the Landlord is entitled to an Order of Possession based on the 10 Day Notice and I award the Landlord this Order. The Order is effective two days after service on the Tenant. I acknowledge that I have awarded the Landlord a Monetary Order for unpaid rent for January. I find it appropriate to issue an Order effective two days after service on the Tenant given rent is due on the first day of each month and given the date in the month.

I have accepted that the Tenant has not paid any rent since October and find the Tenant owes \$3,000.00 in rent for November, December and January. The Landlord is entitled to recover this.

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 \$3,100.00. The Landlord can keep the \$500.00 security deposit pursuant to section 72(2) of the

Act. Pursuant to section 67 of the *Act*, I award the Landlord a Monetary Order for the remaining \$2,600.00.

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 \$3,100.00. The Landlord can keep the \$500.00 security deposit. I award the Landlord a Monetary Order for the remaining \$2,600.00. 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: January 23, 2020

Residential Tenancy Branch