



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNRL-S, OPR

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on December 12, 2019 (the “Application”). The Landlord applied for an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 06, 2019 (the “Notice”), to recover unpaid rent, to keep the security deposit and for reimbursement for the filing fee.

The Landlord attended the hearing with the Translator who also acted as a witness. I note that all testimony of the Landlord was provided through the Translator. Nobody attended for the Tenant.

I asked the Landlord about the rental unit address on the Application as it appeared to be wrong. The Landlord confirmed the rental unit address as shown on the front page of this decision.

I explained the hearing process to the Landlord and Translator who did not have questions about the process when asked. The Landlord and Translator 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 Landlord testified that the hearing package and evidence were served on the Tenant in person and sent to the rental unit by registered mail. The Landlord testified that the packages were served on December 13, 2019. The Landlord provided Tracking Number 1. The Landlord had also submitted the customer receipt for this. I looked Tracking Number 1 up on the Canada Post website which shows the package

was unclaimed and returned to the sender. It shows notice cards were left December 18 and 23, 2019.

The Translator testified that she witnessed the Landlord give the package to the Tenant at the rental unit December 13, 2019.

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 59(3), 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the “*Act*”). The Tenant cannot avoid service by failing to pick the registered mail package up. Pursuant to section 90(a) of the *Act*, the Tenant is deemed to have received the package December 18, 2019.

Based on the undisputed testimony of the Landlord, which is supported by the Translator, I also accept that the Tenant was served with the hearing package and evidence in accordance with sections 88(a) and 89(1)(a) of the *Act*.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Landlord and Translator were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence and oral testimony of the Landlord and Translator. 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?
3. Is the Landlord entitled to keep the security deposit?
4. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord testified as follows. There is a verbal tenancy agreement between her and the Tenant. The tenancy started May 01, 2019 and is a month-to-month tenancy. Rent is \$450.00 per month due on the first day of each month. The Tenant paid a \$255.00 security deposit.

The Notice states that the Tenant failed to pay \$2,700.00 that was due July 01, 2019. The Notice is addressed to the Tenant and refers to the rental unit. It is signed and dated by the Landlord or an agent for the Landlord. It has an effective date of December 16, 2019.

The Landlord testified that both pages of the Notice were served on the Tenant November 22, 2019, December 02, 2019 and December 06, 2019. The Landlord testified that the Notice was served on the Tenant by regular mail December 06, 2019.

The Landlord submitted a Proof of Service. The Landlord testified that this relates to the Notice. The Proof of Service states that the Notice was hand delivered to the Tenant, mailed to the Tenant and attached to the rental unit door December 06, 2019. The Translator testified that she signed the Proof of Service.

The Landlord submitted photos of envelopes sent to the Tenant. The Landlord testified that these were sent November 26, 2019, December 02, 2019 and December 06, 2019 and all included the 10 Day Notice.

The Translator testified that she personally saw the Landlord hand the Tenant the Notice December 06, 2019.

The Landlord testified that the Tenant did not pay rent from July to December of 2019 and this is what is reflected on the Notice. The Landlord testified that the Tenant has not paid any rent since being issued the Notice. The Landlord confirmed \$3,600.00 in rent is currently outstanding.

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

The Landlord sought an Order of Possession effective February 29, 2020.

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, I accept that the Tenant is required to pay \$450.00 in rent by the first day of each month pursuant to the verbal tenancy agreement. Based on the undisputed testimony of the Landlord, I accept that the Tenant did not have authority under the *Act* to withhold rent from July to December. There is no evidence before me that the Tenant did. I find the Tenant was required to

pay \$450.00 by the first day of each month for July to December 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, I accept that the Tenant failed to pay rent from July to December. Given the Tenant failed to pay rent as required, the Landlord was entitled to serve the Tenant with the Notice pursuant to section 46(1) of the *Act*.

I do not accept that the Notice was served November 22, 2019 or December 02, 2019 as the Notice is dated December 06, 2019.

Based on the undisputed testimony of the Translator, I accept that the Notice was served on the Tenant in person December 06, 2019 and therefore in accordance with section 88(a) of the *Act*.

Based on the undisputed testimony of the Landlord and photos submitted, I accept that the Notice was also served on the Tenant by regular mail December 06, 2019. I find the Tenant was served with the Notice in accordance with section 88(c) of the *Act*. Pursuant to section 90(a) of the *Act*, the Tenant is deemed to have received the Notice December 11, 2019.

I have reviewed the Notice and am satisfied it complies with section 52 of the *Act* in form and content as required by section 46(2) of the *Act*.

I note that the Notice states \$2,700.00 was due July 01, 2019 when it should state \$2,700.00 was due December 01, 2019. I do not find this invalidates the Notice. I am satisfied the Tenant did not pay rent for July and therefore did owe rent that was due July 01, 2019. Further, I am satisfied the Tenant owed \$2,700.00 in rent when the Notice was issued. In the circumstances, I am satisfied the discrepancy on the Notice does not invalidate it.

The Tenant had five days from receipt of the Notice to pay or dispute it under section 46(4) of the *Act*. There is no evidence before me that the Tenant disputed the Notice by December 16, 2019.

Based on the undisputed testimony of the Landlord, I accept that the Tenant has not paid any rent since being issued the Notice.

Given the Tenant did not dispute the Notice or pay the outstanding rent by December 16, 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 on the effective date of the Notice. I note that the effective date would have been December 21, 2019 at the latest in relation to the Notice received December 11, 2019. At the latest, the Tenant was required under section 46(5)(b) of the *Act* to vacate the rental unit by December 21, 2019.

The Landlord is entitled to an Order of Possession. Pursuant to section 55 of the *Act*, I issue the Landlord an Order of Possession effective at 1:00 p.m. on February 29, 2020.

Based on the undisputed testimony of the Landlord, I accept that the Tenant has not paid rent since July of 2019 and therefore owes \$3,600.00 in rent. I have accepted that the Tenant did not have authority under the *Act* to withhold rent. Therefore, the Landlord is entitled to recover \$3,600.00 in unpaid rent.

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 \$3,700.00. The Landlord can keep the \$255.00 security deposit pursuant to section 72(2) of the *Act*. I issue the Landlord a Monetary Order for \$3,445.00 pursuant to section 67 of the *Act*.

Conclusion

The Landlord is entitled to an Order of Possession effective at 1:00 p.m. on February 29, 2020. 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 compensation in the amount of \$3,700.00. The Landlord can keep the \$255.00 security deposit. I issue the Landlord a Monetary Order for \$3,445.00. 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: February 06, 2020

Residential Tenancy Branch