



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, OPU-DR

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlords on December 26, 2019 (the "Application"). The Landlords applied for an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 19, 2019 (the "Notice") and reimbursement for the filing fee.

The Landlords filed an amendment February 06, 2020 adding a monetary claim for \$3,599.72 for unpaid rent and utilities. The amendment also confirmed the full legal name of Tenant C.B.

The Landlord attended the hearing. Nobody attended the hearing for the Tenants. 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 Tenants did not submit evidence. I addressed service of the hearing package and Landlords' evidence.

The Landlord testified that the hearing package and some evidence were sent to the Tenants at the rental unit by registered mail on January 10, 2020. The Landlords had submitted a receipt with Tracking Numbers 1 and 2 on it. I looked these up on the Canada Post website which shows notice cards were left January 13, 2020 and January 19, 2020. The Canada Post website shows the packages were refused and returned to the sender. The Landlords submitted a photo of Tenant C.A. holding final notice cards addressed to each Tenant.

The Landlord testified that the amendment and some evidence were sent to the Tenants at the rental unit by registered mail on February 06, 2020. The Landlords had

submitted a receipt with Tracking Numbers 3 and 4 on it. I looked these up on the Canada Post website. The tracking numbers show these packages were not sent by registered mail that required signatures. The tracking information shows the packages were “Delivered to your community mailbox, parcel locker or apt./condo mailbox”.

Based on the undisputed testimony of the Landlord, receipt, photo and Canada Post website information, I find the Tenants were served with the hearing package and some evidence in accordance with sections 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the “*Act*”). The Tenants are not permitted to avoid service by failing to pick up registered mail packages. Pursuant to section 90(a) of the *Act*, the Tenants are deemed to have received the packages January 15, 2020, in sufficient time to allow the Tenants to prepare for, and appear at, the hearing.

In relation to the amendment and further evidence, I am satisfied based on the undisputed testimony of the Landlord, receipt and Canada Post website information that the Tenants were served with the evidence in accordance with section 88(c) of the *Act*. I am not satisfied the Tenants were served with the amendment in accordance with section 89(1) of the *Act* given signatures were not required for the packages. However, I allow the Application to be amended for the following reasons. The Canada Post website information confirms the packages were delivered to the Tenants. The amendment relates to a monetary order for unpaid rent and utilities, both of which are issues raised in the Application as the Notice is for unpaid rent and utilities.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenants. The Landlord was given an opportunity to present relevant evidence and make relevant submissions. 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.

Issues to be Decided

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

Background and Evidence

A written tenancy agreement was submitted as evidence. The Landlord confirmed the Landlords are the landlords in relation to the tenancy agreement. The Landlord confirmed the tenancy agreement relates to the rental unit. The Landlord testified that the tenancy started July 01, 2019.

The tenancy agreement seems to list Tenant C.A. as the tenant and Tenant C.B. as an occupant. However, the tenancy agreement is not clear on this. The Landlord testified that both Tenants are tenants under the tenancy agreement.

The tenancy was for a fixed term of six months. Rent is \$1,100.00 per month due in advance on the last day before the first day of each month. The tenancy agreement states that the Tenants are responsible for 33% of the household utilities each month including gas, hydro and city utilities. The Tenants paid a \$550.00 security deposit. The agreement is signed by the Landlord and Tenants.

The Landlord said he does not want to keep the security deposit towards unpaid rent or utilities.

The Notice states that the Tenants failed to pay \$1,000.00 in rent that was due December 01, 2019 and \$99.05 in utilities following a written demand on December 01, 2019. The Notice is addressed to the Tenants and refers to the rental unit. It is signed and dated by the Landlord. It has an effective date of December 30, 2019.

The Landlord testified that the Notice should state that \$1,100.00 in rent was outstanding and that the \$1,000.00 was a mistake. The Landlord also acknowledged rent was due November 30, 2019 for December.

The Landlord testified that both pages of the Notice were posted to the door of the rental unit December 20, 2019. The Landlords submitted a photo of this. The Landlords submitted a Proof of Service signed by Landlord N.B. confirming this. The Landlords submitted a text message conversation with the Tenants about posting the Notice on the door and providing a photo of the Notice posted on the door.

The Landlord testified that the Tenants stopped paying rent in December and had not paid any rent when the Notice was issued. The Landlord testified that the Tenants paid December rent in full on December 30, 2019. The Landlord testified that the Tenants

did not pay any rent for January, February or March. The Landlord sought \$3,300.00 in unpaid rent.

The Landlord testified that the Tenants did not pay utilities for November and this is reflected on the Notice. The Landlord testified that the Tenants paid the outstanding \$99.05 for utilities December 31, 2019. The Landlord testified that the Tenants did not pay for utilities for December on. The Landlord sought \$460.00 in unpaid utilities for December, January and February.

The Landlord pointed to an email in evidence dated December 03, 2019 as the demand for utilities.

The Landlord testified that the Tenants were sent utility bills December 03, 2019, December 30, 2019 and February 02, 2020. These emails were submitted as evidence. The Landlord also testified that bills were sent in February after the deadline for submitting evidence and so this last email was not submitted.

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

The Landlords submitted utility bills for November, December, January and February.

The Landlord submitted text messages with the Tenants supporting the position that the Tenants failed to pay rent by November 30, 2019 for December.

The Landlords submitted a receipt dated December 31, 2019 showing the Tenants paid \$1,100.00 plus \$100.00 as late payment of rent and utilities.

The Landlords submitted a photo of a note posted to the door of the rental unit indicating payment for December rent was for use and occupancy only.

Analysis

I accept based on the undisputed testimony of the Landlord that both Tenants are tenants under the tenancy agreement.

Section 7 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*.

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 am satisfied the Tenants were required to pay \$1,100.00 in rent each month in advance

on the last day of each month. Based on the undisputed testimony of the Landlord, I am satisfied the Tenants did not have authority under the *Act* to withhold December rent. There is no evidence before me that the Tenants did. I find the Tenants were required to pay \$1,100.00 by November 30, 2019 for December rent 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 receipt, I am satisfied the Tenants failed to pay December rent by November 30, 2019. Given the Tenants failed to pay rent as required, the Landlords were entitled to serve them with the Notice pursuant to section 46(1) of the *Act*.

Based on the undisputed testimony of the Landlord, photo, Proof of Service and text message, I am satisfied the Tenants were served with the Notice in accordance with section 88(g) of the *Act* on December 20, 2019. Pursuant to section 90(c) of the *Act*, the Tenants are deemed to have received the Notice December 23, 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*. I acknowledge that the Notice should state \$1,100.00 was due November 30, 2019; however, I do not find these small errors to invalidate the Notice as the Tenants would have been aware of how much rent was due and when based on their written tenancy agreement.

The Tenants had five days from receipt of the Notice on December 23, 2019 to pay or dispute it under section 46(4) of the *Act*.

The Tenants had until December 28, 2019 to pay the outstanding rent. I am satisfied based on the undisputed testimony of the Landlord and receipt that the Tenants did not pay December rent until December 30, 2019. Therefore, I am satisfied the Tenants did not pay the outstanding rent within five days of receiving the Notice.

I am satisfied based on the undisputed testimony of the Landlord that the Tenants did not dispute the Notice. There is no evidence before me that the Tenants did.

Given the Tenants did not pay the outstanding rent or dispute the Notice within five days of receiving the Notice, pursuant to section 46(5)(a) of the *Act*, the Tenants are conclusively presumed to have accepted that the tenancy ended January 02, 2020, the corrected effective date of the Notice. The Tenants were required under section 46(5)(b) of the *Act* to vacate the rental unit by January 02, 2020.

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

Based on the undisputed testimony of the Landlord, I am satisfied the Tenants did not pay rent for January, February or March. The Landlords are entitled to recover January and February rent. Given the date in March, and given the Landlords sought an Order of Possession effective on two days notice to the Tenants, I am satisfied the Landlords are entitled to recover rent from March 01, 2020 to March 12, 2020 being \$425.80. The Landlords are entitled to recover \$2,625.80 in unpaid rent.

Based on the undisputed testimony of the Landlord and written tenancy agreement, I am satisfied the Tenants were required to pay 33% of the gas, hydro and city utilities each month. Based on the undisputed testimony of the Landlord and emails, I am satisfied the Tenants failed to pay for utilities for December to February. Based on the undisputed testimony of the Landlord and utility bills, I am satisfied the Tenants owed \$460.00 for utilities for December to February. Based on the undisputed testimony of the Landlord and emails, I am satisfied the bills were sent to the Tenants. The Landlords are entitled to recover \$460.00 in unpaid utilities for December to February.

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

The Landlords are entitled to monetary compensation in the amount of \$3,185.80 and are issued a Monetary Order in this amount pursuant to section 67 of the *Act*.

Conclusion

The Landlords are entitled to an Order of Possession effective two days after service on the Tenants. This Order must be served on the Tenants and, if the Tenants do 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 \$3,185.80. 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: March 09, 2020

Residential Tenancy Branch