



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL, OPR, MNDCL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on January 08, 2020 (the "Application"). The Landlord applied for an Order of Possession based on 10 Day Notices to End Tenancy for Unpaid Rent or Utilities, to recover unpaid rent, for compensation for monetary loss or other money owed, to keep the security deposit and for reimbursement for the filing fee.

The Landlord attended the hearing. Nobody attended the hearing for the Tenants. I explained the hearing process to the Landlord. The Landlord provided affirmed testimony.

The Landlord submitted evidence prior to the hearing. The Tenants did not submit evidence. I addressed service of the hearing package and Landlord's evidence.

The Landlord testified that the hearing packages and evidence were sent by registered mail to the Tenants at the rental unit on January 20, 2020. The Landlord provided Tracking Numbers 1 and 2. I looked these up on the Canada Post website which shows notices were left in relation to the packages January 22 and January 27, 2020. It shows the packages were not picked up.

Based on the undisputed testimony of the Landlord and Canada Post website information, I find the Tenants were served with the hearing packages and 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 the packages up. Pursuant to section 90(a) of the *Act*, the Tenants are deemed to have received the packages January 25, 2020. I find the hearing packages and evidence were served in sufficient time to allow the Tenants to prepare for, and appear at, the hearing.

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. Is the Landlord entitled to an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities?
2. Is the Landlord entitled to recover unpaid rent?
3. Is the Landlord entitled to compensation for monetary loss or other money owed?
4. Is the Landlord entitled to keep the security deposit?
5. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord testified as follows. There is a written tenancy agreement between the parties. The tenancy started April 01, 2018 and is for a fixed term ending in April of 2020. Rent is \$2,600.00 per month due on the first day of each month. The Tenants paid a \$1,300.00 security deposit.

The Landlord submitted four 10 Day Notices to End Tenancy for Unpaid Rent or Utilities dated December 09, 2018, March 19, 2019, December 23, 2019 and January 04, 2020.

The Landlord did not seek an Order of Possession based on the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 09, 2018 and I have not considered it.

The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 19, 2019 does not have an effective date and does not comply with section 52 of the *Act*. I therefore have not considered it.

The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 23, 2019 (the "Notice") states that the Tenants failed to pay \$1,800.00 in rent due

December 01, 2019. It 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 January 03, 2020.

The Landlord testified that he served both pages of the Notice by sending it to the rental unit by registered mail on December 23, 2019. The Landlord submitted the receipt for this with Tracking Number 3 on it. I looked this up on the Canada Post website which shows the package was delivered and signed for December 31, 2019 by C.W.

The Landlord provided bank statements and a written outline of rent owing from 2018 to present. The written outline states \$6,300.00 in rent was outstanding as of December 23, 2019; however, the outline indicates \$6,600.00 was outstanding. The Landlord testified that the Tenants failed to pay \$1,800.00 of December rent and therefore this is what he wrote on the Notice. The written outline of rent owing shows the Tenants paid \$1,800.00 in rent for December and therefore \$800.00 of December rent was owing.

The Landlord testified that the Tenants paid the following amounts after the Notice was issued:

- January 01, 2020 - \$400.00
- January 03, 2020 - \$600.00
- January 18, 2020 - \$500.00
- January 28, 2020 - \$800.00
- February 02, 2020 - \$600.00
- February 08, 2020 - \$600.00
- February 10, 2020 - \$400.00
- February 18, 2020 - \$600.00
- February 25, 2020 - \$600.00
- February 28, 2020 - \$1,000.00

The Landlord testified that the Tenants have not paid any rent since February 28, 2020. The Landlord testified that \$7,800.00 in rent is outstanding as of March.

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.

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 am satisfied the Tenants were required to pay \$2,600.00 in rent per month by the first 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 rent at any point from 2018 to present. There is no evidence before me that the Tenants did. I find the Tenants were required to pay \$2,600.00 in rent by the first day of each month under section 26(1) of the *Act* and that section 46(3) of the *Act* does not apply.

Based on the written outline of rent owing and in part on the bank statements, I am satisfied the Tenants failed to pay \$800.00 of December rent. I am also satisfied the Tenants had failed to pay at least \$6,300.00 in rent when the Notice was issued.

Given the Tenants failed to pay rent as required, the Landlord was entitled to serve them with the Notice pursuant to section 46(1) of the *Act*.

Based on the undisputed testimony of the Landlord, receipt and Canada Post website information, I am satisfied the Tenants were served with the Notice in accordance with section 88(c) of the *Act*. Based on the Canada Post website information, I am satisfied the Tenants received the Notice December 31, 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 outstanding rent amount on the Notice is wrong; however, I am not satisfied this invalidates the Notice as the Tenants would have been aware of how much rent was outstanding and the Tenants did not dispute the Notice. Further, I am satisfied that more rent than noted on the Notice was outstanding when the Notice was issued.

The Tenants had five days from receipt of the Notice on December 31, 2019 to pay or dispute it under section 46(4) of the *Act*. Based on the undisputed testimony of the Landlord, I am satisfied the Tenants did not dispute the Notice. There is no evidence before me that the Tenants did.

The Tenants had until January 05, 2020 to pay the outstanding rent. Based on the undisputed testimony of the Landlord, written outline of amounts owing and in part on the bank statements, I am satisfied the Tenants paid \$400.00 on January 01, 2020 and \$600.00 on January 03, 2020. I find the Tenants did not pay the total amount of outstanding rent by January 05, 2020. Nor did the Tenants pay the amount of outstanding rent noted on the Notice by January 05, 2020.

Given the Tenants did not pay the outstanding rent amount or dispute the Notice within five days of receiving it, pursuant to section 46(5)(a) of the *Act*, the Tenants are conclusively presumed to have accepted that the tenancy ended January 10, 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 10, 2020.

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 two days after service on the Tenants.

I accept the undisputed testimony of the Landlord that \$7,800.00 in rent is outstanding. I find the written outline of amounts owing supports that at least this much is owing. I

understand this to include \$2,600.00 for March rent meaning \$5,200.00 was outstanding as of February. I have already found that the Tenants did not have authority under the *Act* to withhold rent. I am satisfied the Landlord is entitled to recover \$5,200.00 in unpaid rent up until February of 2020.

In relation to March rent, given the date and given the Landlord has sought an Order of Possession effective two days after service on the Tenants, I am only satisfied that the Landlord is entitled to recover unpaid rent from March 01, 2020 to March 13, 2020 being \$1,090.32. If the Tenants do not vacate the rental unit by March 13, 2020, the Landlord can file a further Application for Dispute Resolution for 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*.

In total, the Landlord is entitled to monetary compensation in the amount of \$6,390.32. The Landlord can keep the \$1,300.00 security deposit pursuant to section 72(2) of the *Act*. The Landlord is issued a Monetary Order for the remaining \$5,090.32 pursuant to section 67 of the *Act*.

Conclusion

The Landlord is 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 Landlord is entitled to monetary compensation in the amount of \$6,390.32. The Landlord can keep the \$1,300.00 security deposit. The Landlord is issued a Monetary Order for the remaining \$5,090.32. 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 10, 2020

Residential Tenancy Branch