



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on February 28, 2020 (the "Application"). The Landlord applied for an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent dated February 28, 2020 (the "Notice"). The Landlord also sought reimbursement for the filing fee.

The Landlord attended the hearing with A.P. to assist. Nobody attended the hearing for the Tenant. I explained the hearing process to the Landlord and A.P. The Landlord and A.P. provided affirmed testimony.

The Application originally named the Tenant and M.J. During the hearing, A.P. testified that only the Landlord and S.J. signed the written tenancy agreement. A.P. testified that M.J. is an occupant and not a tenant of the rental unit. Given this, I have removed M.J. from the Application and this is reflected in the style of cause.

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

A.P. testified that hearing packages were sent to the Tenant and M.J. at the rental unit by registered mail on March 13, 2020. Customer receipts with Tracking Numbers 1 and 2 had been submitted and A.P. confirmed these relate to the hearing packages. I looked the tracking numbers up on the Canada Post website which shows notice cards were left March 16, 2020 and March 21, 2020.

A.P. testified that the evidence for the hearing was put in the mailbox at the rental unit March 15, 2020.

Based on the undisputed testimony of A.P., customer receipts and Canada Post website information, I am satisfied the Tenant was served with the hearing package in accordance with sections 89(2)(b) of the *Residential Tenancy Act* (the “Act”). I am also satisfied based on the same evidence that the Landlord complied with rule 3.1 of the Rules of Procedure (the “Rules”) in relation to the timing of service. The Tenant cannot avoid service by failing to pick up registered mail. Pursuant to section 90(a) of the Act, the Tenant is deemed to have received the hearing package March 18, 2020.

Based on the undisputed testimony of A.P., I am satisfied the Tenant was served with the evidence in accordance with section 88(f) of the Act. Pursuant to section 90(d) of the Act, the Tenant is deemed to have received the evidence March 18, 2020, in sufficient time prior to the hearing.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Landlord and A.P. were given an opportunity to present relevant evidence and make relevant submissions. I have considered all documentary evidence and oral testimony of the Landlord and A.P. 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 reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence; however, it is too small to read.

A.P. testified as follows in relation to the tenancy agreement. The tenancy started February 01, 2019 and was for a fixed term of one year. Rent is \$1,100.00 per month due on the first day of each month. The Tenant paid a \$800.00 security deposit. The agreement is signed by the Landlord and Tenant.

A.P. confirmed the Landlord is seeking to keep \$100.00 of the security deposit as reimbursement for the filing fee.

The Notice states the Tenant failed to pay \$3,300.00 in rent that was due February 01, 2020. The Notice is addressed to the Tenant and occupant. It refers to the rental unit. It is signed and dated by the Landlord. It has an effective date of March 09, 2020.

A.P. testified that both pages of the Notice were sent to the Tenant at the rental unit by registered mail on February 28, 2020. A.P. confirmed the customer receipt with Tracking Number 3 in evidence relates to this. I looked Tracking Number 3 up on the Canada Post website which shows the package was delivered and signed for March 06, 2020.

A.P. testified that the Tenant has not paid any rent since November of 2019. A.P. confirmed that \$4,400.00 in rent was outstanding when the Notice was issued.

A.P. testified that the Tenant did not dispute the Notice. A.P. testified that the Tenant did not have authority under the *Act* to withhold rent.

A.P. sought an Order of Possession effective two days after service on the Tenant.

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...

Based on the undisputed testimony of A.P., I am satisfied the Tenant is required to pay \$1,100.00 in rent by the first day of each month pursuant to the tenancy agreement. Based on the undisputed testimony of A.P., I am satisfied 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 \$1,100.00 in rent by the first day of each month for November of 2019 to February of 2020 under section 26(1) of the *Act* and that section 46(3) of the *Act* does not apply.

Based on the undisputed testimony of A.P., I am satisfied the Tenant failed to pay rent for November of 2019 to February of 2020. 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 undisputed testimony of A.P., customer receipt and Canada Post website information, I am satisfied the Notice was served on the Tenant in accordance with section 88(c) of the *Act*. Based on the Canada Post website information, I am satisfied the Tenant received the Notice March 06, 2020.

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 was \$4,400.00 rather than \$3,300.00 when the Notice was issued; however, I do not find this invalidates the Notice as the actual amount owing was higher than noted on the Notice and the Tenant should have been aware of how much rent was outstanding.

The Tenant had five days from receipt of the Notice on March 06, 2020 to pay the outstanding rent or dispute the Notice under section 46(4) of the *Act*.

Based on the undisputed testimony of A.P., I am satisfied the Tenant did not pay the outstanding rent or dispute the Notice.

Given the Tenant did not pay the outstanding rent or dispute 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 March 16, 2020, 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 March 16, 2020.

The Landlord is entitled to an Order of Possession. Pursuant to section 55(2)(b) of the *Act*, I issue the Landlord an Order of Possession effective two days after service on the Tenant.

Given the Landlord was successful in the Application, I award the Landlord \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 72(2) of the *Act*, the Landlord can keep \$100.00 of the security deposit as reimbursement for the filing fee.

Conclusion

The Landlord is entitled to 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 **SUBJECT TO THE MINISTERIAL ORDER REFERRED TO ON THE LAST PAGE OF THIS DECISION.**

The Landlord can keep \$100.00 of the security deposit as reimbursement for the filing fee.

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: May 05, 2020