



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, OPRM-DR, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on September 16, 2019 (the "Application"). The Landlord applied as follows:

- For an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 02, 2020 (the "Notice");
- To recover unpaid rent; and
- For reimbursement for the filing fee.

The Agent for the Landlord attended the hearing. Nobody attended for the Tenant. The Agent testified that the Tenant is still living at the rental unit.

The Landlord named a second tenant on the Application. During the hearing, the Agent agreed this person is an occupant and not a tenant. Therefore, I have removed this person from the style of cause.

I explained the hearing process to the Agent who did not have questions when asked. The Agent 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 Agent testified that the hearing package and evidence were posted to the door of the rental unit and sent by registered mail to the rental unit. The Agent testified that a package was sent to the Tenant and occupant and confirmed the tracking numbers shown on registered mail receipts in evidence. The Agent testified that the packages were sent September 17, 2020. The customer receipts in evidence include Tracking

Numbers 1 and 2. I looked these up on the Canada Post website which shows the packages were delivered September 18, 2020.

Based on the undisputed testimony of the Agent, customer receipts 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 *Act*. I also find the Landlord complied with rule 3.1 of the Rules of Procedure (the “Rules”) in relation to the timing of service.

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

Background and Evidence

A written tenancy agreement was submitted as evidence. It only named the Tenant as a tenant. It related to the upper unit at the rental unit address. The tenancy started October 01, 2019. The Agent testified that it was a month-to-month tenancy. Rent was \$2,000.00 per month due on the first day of each month. The Tenant paid a \$1,000.00 security deposit. The agreement was signed by one of the landlords and the Tenant.

The Agent testified as follows. The above is accurate and the only written tenancy agreement between the parties. The Tenant moved to the basement unit March 01, 2020 and rent changed to \$1,100.00 per month. No amendment was done to the above written tenancy agreement. No new written tenancy agreement was done. The Tenant never paid a security deposit in relation to the new tenancy.

The Notice states that the Tenant failed to pay \$5,100.00 due on September 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 September 11, 2020.

The Agent testified that the Notice was posted to the door of the rental unit September 02, 2020. A Proof of Service signed by a witness is in evidence.

The Agent testified that the Notice relates to the following unpaid rent:

- \$2,000.00 from January;
- \$2,000.00 from February; and
- \$1,100.00 from September.

The Agent testified that the Tenant has not paid any rent since the Notice was issued.

The Agent advised that the Tenant previously filed an Application for Dispute Resolution on File Number 1. This was the only dispute the Agent was aware of. I have looked at File Number 1. The Tenant did not dispute a 10 Day Notice in this file, the Tenant disputed a One Month Notice served July 01, 2020. I also note the Application for Dispute Resolution for File Number 1 was filed August 21, 2020 and therefore could not be a dispute of the Notice.

The Landlord provided an outline of rent owing as follows:

- January 1, 2020 - \$2,000
- February 1, 2020 - \$2,000
- May 01, 2020 - \$200.00
- June 01, 2020 - \$550.00
- July 01, 2020 - \$1,100.00
- August 01, 2020 - \$1,100.00
- September 1, 2020 - \$1,100
- October 1, 2020 - \$1,100
- November 1, 2020 - \$1,100

The Agent did not seek November rent. The Agent sought \$9,150.00 in unpaid rent.

The Agent testified that the Tenant has never had authority under the *Act* to withhold rent.

Analysis

I find there were two separate tenancies between the parties in this matter. The first being the tenancy in relation to the upper unit at the rental unit address as reflected in the written tenancy agreement submitted. I find this tenancy ended when the Tenant moved out of the upper unit into the basement unit March 01, 2020. At this point, the Tenant had vacated the upper unit and the tenancy was over pursuant to section 44(1)(d) of the *Act*. I find the parties entered into a second tenancy agreement March 01, 2020 for the basement unit.

The Notice relates to the basement unit and is accurate in this regard. However, the Landlord cannot seek unpaid rent from two separate tenancies in relation to two separate rental units in one Application for Dispute Resolution. The Application relates to the basement unit and corresponding tenancy, not the upper unit and corresponding tenancy. Therefore, I will only consider unpaid rent from March 01, 2020 to present in this decision.

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 has 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 Agent and outline of rents owing, I am satisfied that the Tenant was required to pay \$1,100.00 in rent per month by the first day of each month. Based on the undisputed testimony of the Agent, I am satisfied that the Tenant did not have authority under the *Act* to withhold rent during the tenancy. 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 from March 01, 2020 on pursuant to section 26(1) of the *Act* and that section 46(3) of the *Act* does not apply.

Based on the undisputed testimony of the Agent and outline of rents owing, I am satisfied that the Tenant failed to pay September rent. 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*.

Based on the undisputed testimony of the Agent and Proof of Service, I am satisfied that the Notice was served on the Tenant in accordance with section 88(g) of the *Act*. I am also satisfied that this was done September 02, 2020. Pursuant to section 90(c) of the *Act*, the Tenant is deemed to have received the Notice September 05, 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 Notice states \$5,100.00 in rent was due September 01, 2020 and I have determined that \$4,000.00 of this was from the prior tenancy and therefore should not have been included. However, I amend the Notice to show the correct amount of \$1,100.00 pursuant to section 68 of the *Act* as I am satisfied the Tenant should have known the rent amount outstanding as of September 02, 2020 and I find it reasonable to amend the Notice to reflect the correct rent amount.

The Tenant had five days from receipt of the Notice on September 05, 2020 to pay or dispute it under section 46(4) of the *Act*.

Based on the undisputed testimony of the Agent and outline of rents owing, I am satisfied that the Tenant has not paid any rent since the Notice was issued.

I am not satisfied the Tenant disputed the Notice. The only Application for Dispute Resolution filed by the Tenant that I am aware of is on File Number 1. This was not a dispute of the Notice.

Given the Tenant did not pay the outstanding \$1,100.00 or dispute the Notice by September 10, 2020, I find pursuant to section 46(5)(a) of the *Act* that the Tenant is conclusively presumed to have accepted that the tenancy ended September 15, 2020, the corrected effective date of the Notice pursuant to section 53 of the *Act*. The Tenant was required pursuant to section 46(5)(b) of the *Act* to vacate the rental unit by September 15, 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 Tenant.

Based on the undisputed testimony of the Agent and outline of rents owing, I am satisfied that the following rent amounts are currently outstanding:

- May 01, 2020 - \$200.00
- June 01, 2020 - \$550.00
- July 01, 2020 - \$1,100.00
- August 01, 2020 - \$1,100.00
- September 1, 2020 - \$1,100
- October 1, 2020 - \$1,100

As stated above, I am satisfied the Tenant has never had authority under the *Act* to withhold rent. Therefore, I am satisfied the Tenant currently owes the Landlord \$5,150.00 in unpaid rent.

I acknowledge that some of the unpaid rent is “affected rent” as that term is defined in the *Covid-19 (Residential Tenancy Act and Manufactured Home Park Tenancy Act) (No. 2) Regulation*. I also acknowledge that repayment plans apply to “affected rent” where a landlord seeks to end a tenancy based on non-payment of affected rent. However, here, the tenancy is ending for non-payment of September rent which is not “affected rent”. Given the tenancy is now ended, the Landlord is entitled to the entire rent amount outstanding, including both “affected rent” and non-affected rent.

As 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*.

The Landlord is therefore entitled to monetary compensation in the amount of \$5,250.00. I issue the Landlord a Monetary Order in this amount pursuant to section 67 of the *Act*.

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.

The Landlord is entitled to a Monetary Order in the amount of \$5,250.00. 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: November 09, 2020

Residential Tenancy Branch