Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, 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 September 24, 2020 (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
- To recover the filing fee.

The Agent attended the hearing and called the Caretaker as a witness. The Tenants attended the hearing.

During the hearing, I had concerns about who had been named as the landlord on the Application as the Tenants did not know this person, the Landlord was not present at the hearing, the Agent had not submitted authorization to act for the Landlord and the Notice had a different name on it as the landlord name. Given this, I asked the Agent to have the Landlord call into the hearing and the Agent did. The Landlord provided her full legal name. The Landlord confirmed she owns the rental unit with her husband. The Landlord provided the name of her husband, which lined up with who the Tenants thought owned the rental unit. In the circumstances, I was satisfied the Landlord was properly named in the Application and I have included her full legal name in the style of cause. The Landlord exited the hearing and the Agent continued to conduct the hearing for the Landlord.

I explained the hearing process to the parties who did not have questions when asked. The parties and Caretaker provided affirmed testimony.

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

At first, the Tenants said they were not served with the hearing package. After further questions, the Tenants said they found the hearing package in their yard a month before the hearing.

As explained to the Tenants at the hearing, service requirements are in place to ensure parties have notice of the hearing and notice of the application against them. Here, the Tenants had notice of the hearing and notice of the application against them one month prior to the hearing. The Tenants received the hearing package and had an opportunity to prepare for the hearing. Therefore, pursuant to section 71(2)(c) of the *Residential Tenancy Act* (the "*Act*"), I am satisfied the Tenants were sufficiently served with the hearing package. I also find the timing of service sufficient as the issues raised in the Application are straightforward and one month was sufficient time to prepare for them.

The only evidence submitted by the Landlord was the first page of the Notice, photos of the Notice taped to a door and evidence of service of the hearing package.

The Tenants testified that they did not receive the Landlord's evidence.

The Agent testified that the Landlord's evidence was posted to the door of the rental unit. The Agent said the Caretaker would have further information about this and I had the Agent call the Caretaker into the hearing. The Caretaker did not seem to recall any pertinent details about service. Part way through his testimony, the Caretaker started adding details he didn't recall earlier. I could hear what sounded like a cell phone making noise in the background. I asked the Caretaker if the Agent was sending him the answers to my questions and the Caretaker said the Agent was. I told the Agent and Caretaker this was inappropriate and that if the Caretaker did not know the answers to my questions the appropriate thing to do would be to tell me he did not know. I reminded the Agent and Caretaker that they were providing affirmed testimony. I told the Agent and Caretaker they were to stop communicating while the Caretaker was providing testimony.

The Agent acknowledged the photos of the Notice posted to a door were not served on the Tenants as evidence. Given this, I am satisfied the Landlord did not comply with rule 3.14 of the Rules of Procedure (the "Rules") which required this evidence to be served on the Tenants. I heard from the parties on whether this evidence should be admitted or excluded. I excluded the evidence pursuant to rule 3.17 of the Rules given

it was not served as required and is not something the Tenants would have been aware of or seen absent service.

Given the above, the only evidence of the Landlord that I have considered is the Notice. As stated below, the Tenants acknowledged receiving the Notice September 04, 2020.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered the Notice and all oral testimony of the parties. 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 recover the filing fee?

Background and Evidence

The parties agreed on the following. There is no written tenancy agreement. The tenancy started March 01, 2020 and is a month-to-month tenancy. Rent is $850.00 per month due on the first day of each month. No security or pet damage deposits were paid.

The Landlord only submitted the first page of the Notice. It is addressed to R.Q. It is from a landlord with the name R.L. The Landlord testified that R.L. is her “Facebook name”. It is signed by the Landlord. It is dated September 02, 2020. It has an effective date of September 17, 2020. The address for the Landlord is listed as the rental unit address despite the Application showing the Landlord’s address as a different address in a different city.

The Tenants testified that they did not know the Landlord or who R.L. was. The Tenants pointed out that the Notice is not addressed to both and includes the wrong name for Tenant R.O.

The Tenants acknowledged receiving the Notice September 04, 2020.

The Agent did not have the second page of the Notice. Tenant R.O. testified that the Notice states the Tenants failed to pay $850.00 due September 01, 2020. Tenant R.O. confirmed the second page of the Notice is on the RTB form.

The Agent testified that the Tenants failed to pay September rent and have not paid rent since being issued the Notice. The Agent testified that the Tenants did not have authority under the *Act* to withhold rent and did not dispute the Notice.

The Caretaker testified that the Tenants stopped paying rent in July and stopped paying hydro in June.

In response to questions from the Tenants, the Caretaker testified as follows. He has never given the Tenants hydro bills. He did not receive a payment September 01, 2020. He received $280.00 from the Tenants. He cannot remember when he received this, but it is possible it was received in September. He received $300.00 from the Tenants "on his door" and $300.00 from the Tenants "on their door". He received these payments in July.

Tenant R.O. testified as follows. The Caretaker received $280.00 from the Tenants September 01, 2020. The Tenants also paid $300.00 September 01, 2020. The Tenants failed to pay $270.00 of rent and this amount is still outstanding.

The Tenants acknowledged they did not have authority under the *Act* to withhold rent.

Tenant R.O. said the Tenants did not dispute the Notice.

The Agent advised that the Landlord is only seeking $850.00 for September rent. The Agent testified that the amounts paid by the Tenants were for overdue rent and not September rent. The Agent testified that the Tenants paid rent up until June but only paid $880.00 since June, being $600.00 in July and $280.00 in September.

Tenant G.W. testified that the Tenants paid rent up to August and only September rent was in arrears. Tenant R.O. testified that the Tenants paid $480.00 in August so were in arrears $370.00. Tenant R.O. then testified that the Tenants paid $480.00 and $300.00 in August so $70.00 was outstanding and paid $280.00 in September so $570.00 was outstanding.

At the end of the hearing the Tenants asked questions about emergency repairs and implied that this section of the *Act* might apply. I summarized the requirements of

section 33 of the *Act* and the Tenants acknowledged they had not met the requirements to withhold rent.

As stated, the only admissible relevant evidence before me is page one of the Notice.

Analysis

Pursuant to rule 6.6 of the Rules, it is the Landlord as applicant who has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

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 when 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…
>
> (emphasis added)

Section 52 of the *Act* states:

> 52 **In order to be effective**, a notice to end a tenancy must be in writing and **must**
>
> (a) be signed and dated by the landlord or tenant giving the notice,
>
> (b) give the address of the rental unit,
>
> (c) state the effective date of the notice,
>
> (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy…
>
> (e) when given by a landlord, be in the approved form.
>
> (emphasis added)

Section 55(2)(b) of the *Act* states:

> (2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution…
>
> (b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;

For a notice to end tenancy to be effective, it must comply with section 52 of the *Act*. To comply with section 52(e) of the *Act*, the Notice must be in the approved form. I find this means the Notice must be on the RTB form, or an equivalent, and include all information that is on the RTB form. I also find this means the information on the RTB form, or an equivalent, must be correct.

Here, I only have the first page of the three-page Notice and therefore cannot confirm what page two and three look like or include. The only tenant named on the Notice is a R.Q., which is not the name of either of the Tenants. The landlord's name on the Notice is R.L. which is not the legal name of the Landlord. I accept the testimony of the Tenants that they did not know who R.L. was as there is no evidence before me to show that the Tenants should have known who R.L. was. I find it likely that the Landlord's

address on the Notice is wrong as it is the rental unit address. There was no suggestion during the hearing that the Landlord lives at the rental unit address and the Application shows the Landlord lives at a different address in a different city.

Further, I am not satisfied $850.00 in rent was outstanding when the Notice was issued. The Agent and Caretaker testified about what rent was paid when.

I do not find the Agent to be reliable or credible given he found it appropriate to send text messages to the Caretaker during the hearing providing the Caretaker with answers to my questions and allowed me to be left with the impression that the Caretaker knew this information. I find this to be a dishonest action and am not satisfied I can rely on what the Agent said. Therefore, I put no weight on the testimony of the Agent about unpaid rent.

I do not find the Caretaker to be reliable or credible given he provided answers during the hearing based on the text messages of the Agent when he did not have knowledge of the information he was providing. Rather than telling me he did not know the answers to my questions, the Caretaker led me to believe he did know the answers. I find this to be a dishonest action and am not satisfied I can rely on what the Caretaker said. As well, the Caretaker did not seem to know or remember any pertinent details about the issues before me. Further, I find the Caretaker provided inaccurate testimony when he said the Tenants stopped paying rent in July. It was not until the Tenants questioned the Caretaker that the Caretaker acknowledged receiving $880.00 for rent in July and September. In the circumstances, I put no weight on the testimony of the Caretaker about unpaid rent.

The Landlord did not provide any documentary evidence relating to unpaid rent, other than the first page of the Notice. The Landlord did not provide rent receipts, copies of e-transfers, copies of cheques, copies of correspondence about unpaid rent or a rent ledger. These are all the type of evidence I would expect to see on an application of this nature.

In the circumstances, the Landlord has failed to prove what rent was outstanding when.

I note that I also had concerns about the testimony of the Tenants during the hearing as they gave testimony that conflicted with each other and conflicted with their own previous testimony. However, this is not the Tenants' application and the Tenants do not bear the onus to prove what they paid for rent and when. Therefore, the concerns I have about the Tenants' testimony do not change my decision.

In the circumstances, I find the following issues with the Notice:

- I only have the first page of the three-page Notice and therefore cannot confirm what page two and three look like or include;
- The only tenant named on the Notice is a R.Q., which is not the name of either of the Tenants;
- The landlord's name is R.L. which is not the legal name of the Landlord;
- I accept that the Tenants did not know who R.L. was;
- It is likely that the Landlord's address is wrong; and
- I am not satisfied the basis for the Notice, being that the Tenants failed to pay $850.00 in rent due September 01, 2020, is accurate.

Although I have the authority to amend the Notice pursuant to section 68 of the *Act* so that it complies with section 52 of the *Act*, I decline to do so here given the numerous issues with the Notice as listed above. In the result, I am not satisfied the Notice complies with section 52 of the *Act* and therefore am not satisfied it is a valid or effective Notice. I therefore decline to issue the Landlord an Order of Possession based on the Notice. The request for an Order of Possession based on the Notice is dismissed without leave to re-apply.

In relation to the request for unpaid rent, I am not satisfied $850.00 in rent for September is outstanding and am not satisfied what is outstanding given the issues noted above. Therefore, I dismiss the request for $850.00 for unpaid rent for September without leave to re-apply.

Given the Landlord was not successful in the Application, I decline to award the Landlord reimbursement for the filing fee.

Conclusion

The Application is dismissed without leave to re-apply.

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 25, 2020

Residential Tenancy Branch