



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPU-DR, OPUM-DR, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlords on October 13, 2020 (the “Application”). The Landlords applied as follows:

- For an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 01, 2020 (the “Notice”);
- To recover unpaid rent and utilities; and
- For reimbursement for the filing fee.

This was a direct request that was adjourned to a participatory hearing.

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. I addressed service of the Interim Decision, hearing package and Landlords’ evidence.

The Landlord testified that the Interim Decision, hearing package and evidence were sent to the Tenants by registered mail and confirmed Tracking Numbers 1 and 2 in evidence relate to this. I looked Tracking Numbers 1 and 2 up on the Canada Post website which shows the packages were sent November 16, 2020. The website shows Tenant M.L. signed for the package with Tracking Number 1 on December 29, 2020. The website shows the package with Tracking Number 2 was unclaimed after two notice cards were left.

The Landlords submitted further evidence January 26, 2021. The Landlord testified that this evidence was sent to the Tenants by registered mail on January 26, 2021. The Landlord confirmed Tracking Numbers 3 and 4 relate to this. I looked Tracking Numbers 3 and 4 up on the Canada Post website which shows the packages were delivered January 29, 2021 and that the recipients are not located at the address.

Based on the undisputed testimony of the Landlord, evidence and Canada Post website information, I find the Tenants were served with the Interim Decision, hearing package and most of the evidence in accordance with sections 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the “Act”). I am satisfied based on the Canada Post website information that Tenant M.L. received the package. Tenant D.H. cannot avoid service by failing to pick the package up and is deemed to have received it November 21, 2020 pursuant to section 90(a) of the *Act*. I am satisfied based on the Canada Post website information that the packages were sent November 16, 2020 and am satisfied the Landlords complied with rule 3.1 of the Rules of Procedure (the “Rules”) in relation to the timing of service.

In relation to the evidence submitted January 26, 2021, based on the Canada Post website information I find this was not delivered to the Tenants until January 29, 2021, the day of the hearing. This evidence was not served in accordance with rule 3.14 of the Rules. Pursuant to rule 3.17 of the Rules, I exclude this evidence as I find it would be unfair to consider evidence delivered to the Tenants on the day of the hearing.

As I was satisfied of service of the Interim Decision, hearing package and most of the evidence, 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 the admissible documentary evidence and all 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 and utilities?
3. Are the Landlords 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 August 15, 2020 and is a month-to-month tenancy. Rent is \$2,500.00 per month. Rent was originally due on the 15th day of each month; however, the Tenants asked to change this to the 1st of each month as of September of 2020. The Tenants paid a \$1,250.00 security deposit.

The Landlords are seeking to keep the security deposit towards unpaid rent and utilities.

The only monies paid by the Tenants throughout the tenancy was \$1,250.00 for the security deposit and \$970.00 for rent in the first week of September. There was \$4,680.00 in rent outstanding as of October 01, 2020 and this is reflected on the Notice. The Notice reflects outstanding rent for August, September and October. The Tenants did not have authority under the *Act* to withhold rent. There is currently \$12,224.00 in rent outstanding.

All of the information on the Notice was completed correctly.

The Notice was put in the mailbox of the rental unit October 01, 2020.

The Tenants did not pay any rent after the Notice was issued.

The Landlord is not aware of the Tenants disputing the Notice.

The Landlords did not give the Tenants a written demand for utilities.

The Tenants were obligated under the tenancy agreement to pay for all utilities. There is currently \$1,411.12 outstanding for unpaid utilities. The bills have been submitted. All bills were provided to the Tenants.

The relevant admissible evidence before me includes the following.

The Notice although the outer edges of the Notice are cut off such that I cannot see all of the information on it.

Utility bills. Some of the bills cover time periods prior to the tenancy. The bills that are within the tenancy period add up to \$150.75, although some of these bills include periods outside the tenancy as well.

A Direct Request Worksheet showing the Tenants failed to pay September and October rent except \$276.00 paid September 20, 2020. It also shows \$145.18 in utilities outstanding for September and October.

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 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...

I note at the outset that I have concerns about the reliability and/or credibility of the Landlord's testimony. Throughout the hearing, the Landlord provided conflicting testimony, changed the testimony and provided testimony that does not accord with the documentary evidence submitted. However, the Landlord is only required to prove the claims on a balance of probabilities pursuant to rule 6.6 of the Rules. Given the Tenants did not appear at the hearing to dispute the Landlord's testimony, I am satisfied the Landlord has proven the claims on a balance of probabilities.

I am satisfied based on the Landlord's undisputed testimony that rent is \$2,500.00 per month and was due on the first day of each month as of September 01, 2020.

The Notice was issued October 01, 2020 and therefore too early to include October rent which was only due October 01, 2020. Therefore, I have only considered September rent when considering the validity of the Notice.

I am satisfied based on the Landlord's undisputed testimony that the Tenants did not have authority under the *Act* to withhold September rent. There is no evidence before me that the Tenants did.

I am satisfied the Tenants were required to pay \$2,500.00 by September 01, 2020 for September rent pursuant to section 26(1) of the *Act* and that section 46(3) of the *Act* does not apply.

I am satisfied based on the Landlord's undisputed testimony that the only rent paid by the Tenants during the tenancy was \$970.00 in the first week of September. Therefore, I am satisfied the Tenants owed \$1,530.00 for September rent when the Notice was issued. 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*.

I am satisfied based on the Landlord's undisputed testimony that the Notice was put in the mailbox of the rental unit October 01, 2020. I am satisfied the Notice was served on the Tenants in accordance with section 88(f) of the *Act*. Pursuant to section 90(d) of the *Act*, the Tenants are deemed to have received the Notice October 04, 2020.

I am satisfied based on the Landlord's undisputed testimony about the contents of the Notice, as well as my review of the Notice, that the Notice complies with section 52 of the *Act* in form and content as required by section 46(2) of the *Act*. I acknowledge that the amount of rent outstanding indicated on the Notice is wrong; however, I do not find that this invalidates the Notice.

The Tenants had five days from receipt of the Notice on October 04, 2020 to pay the correct outstanding amount or dispute the Notice pursuant to section 46(4) of the *Act*.

I am satisfied based on the Landlord's undisputed testimony that the Tenants did not pay any rent after the Notice was issued. Therefore, I am satisfied the Tenants did not pay the correct outstanding amount within five days.

RTB records show the Tenants disputed the Notice November 01, 2020; however, the dispute was dismissed with leave to re-apply. There is no evidence before me that the Tenants re-applied.

Given the above, I am satisfied the Tenants did not pay the correct outstanding amount or dispute the Notice by October 09, 2020 as required. Given this, I find pursuant to section 46(5)(a) of the *Act* that the Tenants are conclusively presumed to have accepted that the tenancy ended October 15, 2020, the effective date of the Notice. The Tenants were required pursuant to section 46(5)(b) of the *Act* to vacate the rental unit by October 15, 2020.

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

I am satisfied based on the Landlord's undisputed testimony that the Tenants currently owe \$12,224.00 in rent. I allow the Landlords to amend the Application to request this amount pursuant to rule 4.2 of the Rules. I am satisfied the Landlords are entitled to recover \$12,224.00 in unpaid rent. I acknowledge that this amount does not accord with the Landlord's testimony about what was paid during the tenancy; however, it is a lower amount and therefore I award the Landlords the amount sought.

I am satisfied based on the Landlord's undisputed testimony that the Tenants currently owe \$1,411.12 for unpaid utilities. I allow the Landlords to amend the Application to request this amount pursuant to rule 4.2 of the Rules. I am satisfied the Landlords are entitled to recover \$1,411.12 for unpaid utilities.

As 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 therefore entitled to monetary compensation in the amount of \$13,735.12. The Landlords can keep the \$1,250.00 security deposit pursuant to section

72(2) of the *Act*. I issue the Landlords a Monetary Order for the remaining \$12,485.12 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 monetary compensation in the amount of \$13,735.12. The Landlords can keep the \$1,250.00 security deposit. The Landlords are issued a Monetary Order for the remaining \$12,485.12. 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: February 01, 2021

Residential Tenancy Branch