



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RP, LRE, LAT, OLC (Tenants)
OPR-DR, OPRM-DR, FFL (Landlords)

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties.

The Tenants filed their application December 17, 2020 (the “Tenants’ Application”). The Tenants applied as follows:

- To dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities
- For a repair order
- To suspend or set conditions on the landlord's right to enter the rental unit
- For authorization to change the locks to the rental unit
- For an order that the landlord comply with the Act, regulation and/or the tenancy agreement

The Landlords filed their application December 19, 2020 (the “Landlords’ Application”). The Landlords applied as follows:

- For an Order of Possession based on 10 Day Notices to End Tenancy for Unpaid Rent or Utilities
- To recover unpaid rent
- For reimbursement for the filing fee

The Landlords filed an amendment January 30, 2021 seeking further unpaid rent (the “Amendment”).

The Agent for the Landlords appeared at the hearing with S.B. to assist. The Tenants did not appear at the hearing which lasted 26 minutes. I explained the hearing process

to the Agent and S.B. who did not have questions when asked. The Agent and S.B. provided affirmed testimony.

Both parties submitted evidence. I addressed service of the hearing packages and evidence.

S.B. testified that the Landlords did not receive a hearing package or evidence for the Tenants' Application.

S.B. testified that the hearing package and evidence for the Landlords' Application was sent to each of the Tenants at the rental unit by registered mail. S.B. confirmed Tracking Numbers 1 and 2 relate to this. The Landlords submitted tracking information for these packages showing they were sent December 29, 2020 and delivered January 04, 2021.

S.B. testified that the Amendment was sent to each of the Tenants at the rental unit by registered mail. S.B. confirmed Tracking Numbers 3 and 4 relate to this. The Landlords submitted tracking information for these packages showing they were sent February 16, 2021 and delivered February 17, 2021.

Based on the undisputed testimony of S.B. and tracking information, I find the Tenants were served with the hearing package and evidence in accordance with sections 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the "Act"). Based on the tracking information, I find the Tenants received the hearing package and evidence January 04, 2021. I find the Landlords complied with rule 3.1 of the Rules of Procedure (the "Rules") in relation to the timing of service.

Based on the undisputed testimony of S.B. and tracking information, I find the Tenants were served with the Amendment in accordance with section 89(1)(c) of the *Act*. Based on the tracking information, I find the Tenants received the Amendment February 17, 2021. I find the Landlords complied with rule 4.6 of 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 Tenants.

I accept the undisputed testimony of S.B. that the Tenants did not serve the hearing package or evidence for the Tenants' Application on the Landlords. There is no evidence before me showing the Tenants did serve the hearing package or evidence.

The Tenants were required to serve the hearing package and evidence on the Landlords pursuant to section 59(3) of the *Act* and rule 3.1 of the Rules. Given the Tenants did not serve the hearing package and evidence as required, the Tenants' Application is dismissed and the evidence is not admissible.

Further, rule 7.3 of the Rules states:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Given the Tenants failed to attend the hearing, the Tenants' Application is dismissed without leave to re-apply.

The Agent and S.B. were given an opportunity to present relevant evidence and make relevant submissions. I have considered the Landlords' documentary evidence and oral testimony of the Agent and S.B. 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?
2. Are the Landlords entitled to recover unpaid rent?
3. Are the Landlords entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence. The tenancy started April 01, 2020 and is a month-to-month tenancy. Rent is \$1,600.00 per month due on the first day of each month. The Tenants paid a security deposit of \$800.00. The agreement is signed by the Agent and Tenants.

S.B. asked that the Landlords be permitted to keep the security deposit towards unpaid rent.

Three 10 Day Notices to End Tenancy for Unpaid Rent or Utilities were submitted for October, November and December unpaid rent. The 10 Day Notices to End Tenancy

for Unpaid Rent or Utilities are all dated December 12, 2020. S.B. confirmed all three 10 Day Notices to End Tenancy for Unpaid Rent or Utilities were served on the Tenants at the same time. I have considered the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued for December rent (the “10 Day Notice”).

The 10 Day Notice states that the Tenants failed to pay \$1,600.00 in rent due December 01, 2020. It is addressed to the Tenants and refers to the rental unit. It is signed and dated by the Agent. It has an effective date of December 22, 2020.

S.B. testified that the 10 Day Notice, as well as all other notices, were put in the mailbox of the rental unit, taped to the door of the rental unit and given to Tenant L.K. in person on December 12, 2020. The Landlords submitted a Proof of Service and photos to confirm service.

S.B. testified as follows. The Tenants have not paid any rent from October of 2020 to present. The Tenants did not have authority under the *Act* to withhold rent.

S.B. and the Agent sought an Order of Possession effective two days after service on the Tenants. Given this, S.B. and the Agent sought unpaid rent in full for October of 2020 to February of 2021 and half of March rent being \$800.00.

The Landlords submitted text messages between the parties about unpaid 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 when tenants fail 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...

Section 55(1) of the *Act* requires an arbitrator to issue an Order of Possession when a tenant disputes a notice to end tenancy and the application is dismissed or the notice is upheld. The notice must comply with section 52 of the *Act*.

Based on the written tenancy agreement, I accept that the Tenants were obligated to pay \$1,600.00 in rent per month by the first day of each month. Based on the undisputed testimony of S.B., I accept that the Tenants did not have authority under the *Act* to withhold December rent. There is no evidence before me that the Tenants did have authority under the *Act* to withhold December rent. I find the Tenants were required to pay \$1,600.00 in rent by December 01, 2020 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 S.B. and in part on the text messages, I accept that the Tenants did not pay December rent. Given the Tenants failed to pay rent as required, the Landlords were entitled to serve the Tenants with the 10 Day Notice pursuant to section 46(1) of the *Act*.

Based on the Proof of Service, undisputed testimony of S.B. and photos, I find the Tenants were served with the 10 Day Notice in accordance with section 88(a) of the *Act*. Given the 10 Day Notice was served on L.K. in person, I find the Tenants received the 10 Day Notice December 12, 2020.

Upon a review of the 10 Day Notice, I find it complies with section 52 of the *Act* in form and content as required by section 46(2) of the *Act*.

The Tenants had five days from receipt of the 10 Day Notice on December 12, 2020 to pay the outstanding rent or dispute the 10 Day Notice pursuant to section 46(4) of the *Act*.

Based on the undisputed testimony of S.B., I accept that the Tenants have not paid any rent since October of 2020 and therefore did not pay the outstanding rent by December 17, 2020.

The Tenants filed their dispute of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on December 17, 2020, within time. However, the Tenants failed to serve the hearing package for the Tenants' Application and failed to attend the hearing. The Tenants' Application has been dismissed without leave to re-apply. In the circumstances, the Tenants have not provided a basis to cancel the 10 Day Notice.

Given the above, I am satisfied the Landlords had grounds to issue the 10 Day Notice and uphold the 10 Day Notice. The Landlords are entitled to an Order of Possession pursuant to section 55(1) of the *Act*. The Order will be effective two days after service on the Tenants.

I am satisfied based on the undisputed testimony of S.B. and in part on the text messages that the Tenants have failed to pay rent from October of 2020 to present. I am satisfied based on the undisputed testimony of S.B. that the Tenants did not have authority under the *Act* to withhold this rent. The Landlords are entitled to \$8,800.00 in unpaid rent for five months from October of 2020 to February of 2021 and half of March.

As the Landlords were successful in the Application, I award the Landlords reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Landlords are entitled to monetary compensation in the amount of \$8,900.00. The Landlords can keep the \$800.00 security deposit pursuant to section 72(2) of the *Act*. Pursuant to section 67 of the *Act*, the Landlords are issued a Monetary Order for the remaining \$8,100.00.

Conclusion

The Landlords are issued 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 \$8,900.00. The Landlords can keep the \$800.00 security deposit. I award the Landlords a Monetary Order for the remaining \$8,100.00. 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 16, 2021

Residential Tenancy Branch