



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Inlet View c/o Bayside Property Services Ltd. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, OPR, MNDCL-S, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on January 07, 2021 (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 December 09, 2020 (the “Notice”);
- To recover unpaid rent;
- For compensation for monetary loss or other money owed;
- To keep the security deposit; and
- For reimbursement for the filing fee.

K.O. and A.K. (the “Agents”) attended the hearing for the Landlord. Nobody attended the hearing for the Tenant. I explained the hearing process to the Agents who did not have questions when asked. I told the Agents parties are not allowed to record these hearings pursuant to the Rules of Procedure (the “Rules”). The Agents provided affirmed testimony.

The Landlord originally sought liquidated damages in the Application; however, the Landlord submitted a revised Monetary Order Worksheet seeking unpaid rent, late fees and the filing fee. K.O. confirmed during the hearing that the Landlord is not seeking liquidated damages.

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.

K.O. testified that the hearing package and evidence were sent by registered mail to the rental unit on January 08, 2021. K.O. provided Tracking Number 1. I looked Tracking Number 1 up on the Canada Post website which shows the package was delivered January 11, 2021.

The Landlord submitted evidence showing the revised Monetary Order Worksheet was sent to the rental unit by registered mail on March 23, 2021. The evidence shows Tracking Number 2 relates to this package. I looked Tracking Number 2 up on the Canada Post website which shows notice cards in relation to the package were left March 24, 2021 and March 30, 2021.

Based on the undisputed testimony of K.O. 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 *Residential Tenancy Act* (the "Act"). Based on the Canada Post website information, I am satisfied the Tenant received the package January 11, 2021. I also find the Landlord complied with rule 3.1 of the Rules in relation to the timing of service.

Based on the documentary evidence and Canada Post website information, I find the Tenant was served with the revised Monetary Order Worksheet in accordance with sections 88(c) and 89(1)(c) of the *Act*. The Tenant is deemed served with the revised Monetary Order Worksheet March 28, 2021 pursuant to section 90(a) of the *Act*. I find the timing of service sufficient. I also note that rule 4.2 of the Rules would have allowed the Landlord to amend the amounts sought for additional unpaid rent and late fees at the hearing. Further, the Landlord could have withdrawn the request for liquidated damages at the hearing as there is no unfairness to the Tenant in allowing this.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Agents were given an opportunity to present relevant evidence and make relevant submissions. I have considered all documentary evidence and oral testimony of the Agents. 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 compensation for monetary loss or other money owed?

4. Is the Landlord entitled to keep the security deposit?

5. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence. The tenancy started August 01, 2020 and is a month-to-month tenancy. Rent is \$1,539.00 per month due on the first day of each month. The Tenant paid a \$769.50 security deposit. The agreement is signed for the Landlord and by the Tenant.

The tenancy agreement includes an addendum with term 2 which outlines a \$25.00 fee for late rent payments.

The Notice states that the Tenant failed to pay \$3,077.50 in rent due December 01, 2020. The Notice is addressed to the Tenant and refers to the rental unit. The Notice is signed and dated by K.O. The Notice has an effective date of December 24, 2020.

K.O. confirmed the documentary evidence which shows the Notice was sent to the rental unit by registered mail on December 09, 2020 with Tracking Number 3. The Landlord submitted the Canada Post tracking information showing the package was delivered December 14, 2020.

K.O. testified as follows. The Tenant overpaid the security deposit by fifty cents which was put towards August rent. The Tenant did not pay anything further for August rent and did not pay December rent, which is reflected in the Notice. The Tenant has not paid any rent since being issued the Notice. The Tenant did not dispute the Notice. The Tenant did not have authority under the *Act* to withhold rent.

K.O. confirmed the Landlord is seeking the following compensation:

- \$3,077.50 for unpaid rent for August and December of 2020;
- \$4,617.00 for unpaid rent for January to March of 2021; and
- \$150.00 for late fees for September, November, December, January, February and March.

K.O. testified that the Tenant did not have authority to withhold rent for January to March of 2021.

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 accept the undisputed testimony of K.O. and based on it, as well as the documentary evidence submitted, I find as follows.

The Tenant is required to pay \$1,539.00 in rent per month by the first day of each month pursuant to the tenancy agreement. The Tenant did not have authority under the *Act* to withhold rent for August or December of 2020. Therefore, the Tenant was

required to pay \$1,539.00 by August 01, 2020 for August rent and by December 01, 2020 for December rent pursuant to section 26(1) of the *Act* and section 46(3) of the *Act* does not apply.

Pursuant to the *Covid-19 (Residential Tenancy Act and Manufactured Home Park Tenancy Act) (No. 3) Regulation*, the Landlord was required to give the Tenant a repayment plan for rent due August 01, 2020 prior to seeking to end the tenancy for unpaid rent for August. There is no evidence before me that the Landlord did give the Tenant a repayment plan for August rent. Therefore, I have only considered the Notice in relation to December rent.

I accept that the Tenant failed to pay December 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*.

I accept that the Notice was sent to the rental unit by registered mail on December 09, 2020 and therefore served in accordance with section 88(c) of the *Act*. I accept that the Notice was delivered December 14, 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 includes unpaid rent for August and December and that I am only considering unpaid rent for December; however, I do not find that this invalidates the Notice.

The Tenant had five days from receipt of the Notice on December 14, 2020 to pay the outstanding rent for December or dispute the Notice pursuant to section 46(4) of the *Act*. I accept that the Tenant has not paid any rent since being issued the Notice. I accept that the Tenant did not dispute the Notice.

Given the Tenant did not pay the outstanding rent for December or dispute the Notice as required, I find pursuant to section 46(5)(a) of the *Act* that the Tenant is conclusively presumed to have accepted that the tenancy ended December 24, 2020, the effective date of the Notice. The Tenant was required pursuant to section 46(5)(b) of the *Act* to vacate the rental unit by December 24, 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.

I accept that \$7,694.50 in rent is currently outstanding. I accept that the Tenant did not have authority under the *Act* to withhold any of this rent. The Landlord is entitled to recover \$7,694.50 in unpaid rent. I acknowledge that this amount includes August rent and note that the Landlord is entitled to collect all outstanding rent at this point given the tenancy is ended.

Based on the undisputed testimony of K.O. and pursuant to section 7 of the *Act*, section 7(1)(d) and (2) of the *Residential Tenancy Regulation* and term 2 of the tenancy agreement, I find the Tenant owes the Landlord \$150.00 in late fees for late payment of rent and I award the Landlord this amount.

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 \$7,944.50. The Landlord can keep the \$769.50 security deposit pursuant to section 72(2) of the *Act*. The Landlord is issued a Monetary Order for the remaining \$7,175.00 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 \$7,944.50. The Landlord can keep the \$769.50 security deposit. The Landlord is issued a Monetary Order for the remaining \$7,175.00. 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: April 07, 2021

Residential Tenancy Branch