



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding action property management group
Ltd. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR, OPRM-DR, FFL (Landlord)
 CNR-MT (Tenant)

Introduction

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

The Tenant filed the application January 14, 2021 (the “Tenant’s Application”). The Tenant applied to dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and for more time to dispute the 10 Day Notice.

The Landlord filed the application February 03, 2021 (the “Landlord’s 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 January 05, 2021 (the “Notice”)
- To recover unpaid rent
- For reimbursement for the filing fee

The Agent for the Landlord appeared at the hearing. The Tenant did not appear at the hearing which lasted 16 minutes. I explained the hearing process to the Agent who did not have questions when asked. I told the Agent that parties are not allowed to record these hearings pursuant to the Rules of Procedure (the “Rules”). The Agent provided affirmed testimony.

The Agent confirmed the correct Landlord name which is reflected in the style of cause.

The Landlord submitted evidence prior to the hearing. The Tenant did not submit evidence. I addressed service of the hearing packages and Landlord’s evidence.

The Agent advised that the Landlord did not receive any documentation about the Tenant's Application and were not aware of it.

The Agent testified that the hearing package and evidence for the Landlord's Application were sent to the rental unit by registered mail on February 10, 2021. The Landlord provided a Proof of Service and a Customer Receipt with Tracking Number 1 on it. I looked Tracking Number 1 up on the Canada Post website which shows notice cards were left in relation to the package on February 11, 2021 and February 16, 2021 and the package was unclaimed.

Based on the undisputed testimony of the Agent, Customer Receipt 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*"). Pursuant to section 90(a) of the *Act*, the Tenant is deemed to have received the package February 15, 2021. I also find the Landlord complied with rule 3.1 of the Rules in relation to the timing of service.

I also note that the Tenant would have been aware of the hearing as the Tenant's Application was scheduled for the same date and time.

As I was satisfied of service of the Tenant, I proceeded with the hearing in the absence of the Tenant.

Pursuant to section 59(3) of the *Act* and rule 3.1 of the Rules, the Tenant was required to serve the hearing package for the Tenant's Application on the Landlord. Based on the undisputed testimony of the Agent, I accept that the Tenant did not serve the hearing package for the Tenant's Application on the Landlord. Given this, the Tenant's Application is dismissed.

Further, rule 7.3 of the Rules states:

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 Tenant did not appear at the hearing, the Tenant's Application is dismissed without leave to re-apply.

The Agent was given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence submitted and all 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. The tenancy started August 01, 2018 and is a month-to-month tenancy. Rent is \$825.00 per month due on the first day of each month. A \$412.50 security deposit was paid. The agreement is signed for the Landlord and by the Tenant. The Agent advised that the Tenant was added to the tenancy agreement of the co-tenant on January 03, 2020. The Agent advised that the co-tenant has vacated the rental unit.

The Agent sought to keep the security deposit towards unpaid rent.

The Notice states that the Tenant failed to pay \$1,669.00 in rent due January 01, 2021. The Notice is addressed to the Tenant and refers to the rental unit. The Notice is signed and dated by an agent for the Landlord. The Notice has an effective date of January 05, 2021.

A Proof of Service in relation to the Notice was submitted. The Agent confirmed the Notice was posted to the door of the rental unit January 05, 2021 as stated in the Proof of Service.

The Agent testified that the Notice includes the following outstanding rent:

- \$19.00 from November 2020
- \$825.00 from December 2020
- \$825.00 from January 2021

The Agent testified that the Tenant did not have authority under the *Act* to withhold rent. The Agent testified that the Tenant has not paid any rent since being issued the Notice.

The Agent sought to recover the following unpaid rent:

- \$1,669.00 as of the date the Notice was issued
- \$825.00 for February 2021 rent
- \$825.00 for March 2021 rent
- \$412.50 for half of April 2021 rent (given the Order of Possession date)

The Agent testified that the Tenant did not have authority under the *Act* to withhold any of the above rent.

The Agent sought an Order of Possession effective two days after service on the Tenant.

Analysis

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 fails 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...

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*.

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

I accept that the Tenant was obligated to pay \$825.00 in rent per month by the first day of each month pursuant to the tenancy agreement. I accept that the Tenant did not have authority under the *Act* to withhold rent. Therefore, the Tenant was required to pay \$825.00 in rent for each of November, December and January pursuant to section 26(1) of the *Act*. Further, section 46(3) of the *Act* does not apply.

I accept that the Tenant failed to pay full rent for November and failed to pay rent for December and January. 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 Tenant was served with the Notice in accordance with section 88(g) of the *Act*. The Tenant is deemed to have received the Notice January 08, 2021 pursuant to section 90(c) of the *Act*.

Upon a review of the 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 Tenant had five days from receipt of the Notice on January 08, 2021 to pay the outstanding rent 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.

The Tenant disputed the Notice January 14, 2021, past the five-day deadline. The Tenant did not appear at the hearing to provide a basis for the Tenant's Application or the request for more time to file the dispute and therefore the five-day deadline applies.

I find the Tenant did not pay the outstanding rent or dispute the Notice within time. Therefore, pursuant to section 46(5) of the *Act*, the Tenant is conclusively presumed to have accepted that the tenancy ended January 18, 2021, the corrected effective date of the Notice. The Tenant was required to vacate the rental unit by January 18, 2021.

I note that, even if the Tenant had disputed the Notice within the five-day deadline, the dispute has been dismissed without leave to re-apply. The Landlord therefore would have been entitled to an Order of Possession pursuant to section 55(1) of the *Act* in any event.

I find the Landlord is entitled to an Order of Possession based on the Notice and I issue the Landlord an Order which is effective two days after service on the Tenant.

I accept that \$3,731.50 in rent is currently outstanding. I accept that the Tenant did not have authority to withhold any of this rent. Pursuant to sections 26 and 57 of the *Act*, the Landlord is entitled to recover this rent.

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

In total, the Landlord is entitled to monetary compensation in the amount of \$3,831.50. The Landlord can keep the \$412.50 security deposit pursuant to section 72(2) of the *Act*. Pursuant to section 67 of the *Act*, I issue the Landlord a Monetary Order for the remaining \$3,419.00.

Conclusion

The Landlord is issued 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 monetary compensation in the amount of \$3,831.50. The Landlord can keep the \$412.50 security deposit. The Landlord is issued a Monetary Order for the remaining \$3,419.00. 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 13, 2021

Residential Tenancy Branch