



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ASK Wellness Society and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR-PP, OPRM-DR

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on January 21, 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 January 04, 2021 (the "Notice")
- To recover unpaid rent

The Landlord filed an amendment May 04, 2021 changing the amount of unpaid rent sought to \$4,929.00 (the "Amendment").

R.D. and C.D. appeared at the hearing as agents for the Landlord (the "Agents"). Nobody appeared at the hearing for the Tenant. I explained the hearing process to the Agents who did not have questions when asked. I told the Agents they were not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). The Agents provided affirmed testimony.

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.

R.D. testified as follows. The hearing package and evidence were sent by registered mail to the rental unit on February 26, 2021 and Tracking Number 1 relates to this. The hearing package, evidence and Amendment were sent by registered mail to the rental unit on May 03, 2021 and Tracking Number 2 relates to this.

I looked Tracking Number 1 up on the Canada Post website which shows a notice card was left March 03, 2021 and the package was unclaimed. The website shows the recipient is not located at the address provided.

I looked Tracking Number 2 up on the Canada Post website which shows a notice card was left May 05, 2021 and the package was unclaimed. The website shows the recipient is not located at the address provided.

R.D. confirmed that the packages were sent to the rental unit and that the Tenant still lives at the rental unit. The Landlord submitted customer receipts for the packages.

Based on the undisputed testimony of R.D., the customer receipts and the Canada Post website information, I am satisfied the Tenant was served with the hearing package, evidence and Amendment 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 hearing package and evidence on March 03, 2021 and the Amendment on May 08, 2021. I find the Tenant was served with the hearing package in sufficient time to prepare for, and attend, the hearing. I find the Landlord complied with rules 3.14 and 4.6 of the Rules in relation to the timing of service for the Amendment and evidence.

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?

Background and Evidence

A written tenancy agreement was submitted as evidence. The tenancy started December 19, 2019 and is a month-to-month tenancy. Rent was \$921.00 due on the first day of each month. The Tenant paid a \$595.00 security deposit. The agreement is signed for the Landlord and by the Tenant.

R.D. testified that rent is currently \$1,223.00 and has been since November 01, 2020.

R.D. confirmed the Landlord is seeking to keep the security deposit towards unpaid rent.

The Notice states that the Tenant failed to pay \$3,975.00 in rent due January 01, 2020. The Notice is addressed to the Tenant and refers to the rental unit. The Notice is signed and dated by C.D. The Notice has an effective date of January 15, 2021.

The Landlord submitted a Proof of Service showing C.D. left the Notice in the Tenant's mailbox January 04, 2021. The Proof of Service is signed by a witness. C.D. confirmed the Proof of Service is accurate.

R.D. testified that the Tenant failed to pay August rent and was issued a Repayment Plan on October 15, 2020. R.D. testified that the Tenant failed to pay rent for November, December and January. R.D. testified that the Tenant also failed to pay the rent arrears noted on the Repayment Plan.

R.D. testified that the Tenant made the following payments after the Notice was issued:

- \$930.00 on February 22, 2021
- \$2,400.00 on March 12, 2021
- \$1,223.00 on March 12, 2021

R.D. testified that the Tenant did not have authority under the *Act* to withhold rent. R.D. testified that she is not aware of the Tenant disputing the Notice.

R.D. testified that \$4,929.00 in rent is currently outstanding. R.D. sought an Order of Possession effective May 31, 2021.

The Landlord submitted the following evidence:

- The Notice
- The Proof of Service
- The Repayment Plan dated October 15, 2020 with the first payment due November 01, 2020
- Documentation regarding a rent subsidy
- The tenancy agreement
- A rent statement

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...

In relation to August rent, the Landlord was required to give the Tenant a repayment plan in accordance with the *Covid-19 (Residential Tenancy Act and Manufactured Home Park Tenancy Act) (No. 3) Regulation* (the "*Regulation*"). Section 4 of the *Regulation* states:

- (1) The following are terms of each repayment plan...

(d) the date the first instalment must be paid must be at least 30 days after the date the repayment plan is given by the landlord to the tenant.

The Repayment Plan was given to the Tenant October 15, 2020 and the first payment was due November 01, 2020 which does not comply with the *Regulation*. Given this, I have only considered the Notice as it relates to unpaid rent for November of 2020 to January of 2021.

Based on the undisputed testimony of R.D. and the documentary evidence submitted, I am satisfied the Tenant was required to pay \$1,223.00 in rent per month by the first day of each month. Based on the undisputed testimony of R.D., I am satisfied the Tenant did not have authority under the *Act* to withhold rent. There is no evidence before me that the Tenant did have authority under the *Act* to withhold rent. I am satisfied the Tenant was required to pay \$1,223.00 by the first of each month for November of 2020 to January of 2021 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 R.D. and the documentary evidence submitted, I am satisfied the Tenant failed to pay rent for November of 2020 to January of 2021 and that \$3,669.00 in rent was outstanding when the Notice was issued. 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*.

Based on the undisputed testimony of C.D. and the Proof of Service, I am satisfied that the Notice was served on the Tenant in accordance with section 88(f) of the *Act* on January 04, 2021. Pursuant to section 90(d) of the *Act*, the Tenant is deemed to have received the Notice January 07, 2021.

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 amount of rent outstanding on the Notice includes August rent arrears and I have not considered this as explained above; however, I do not find that this invalidates the Notice.

The Tenant had five days from receipt of the Notice on January 07, 2021 to pay the outstanding rent of \$3,669.00 or dispute the Notice pursuant to section 46(4) of the *Act*.

I accept the undisputed testimony of R.D. that the next rent payment was made by the Tenant on February 22, 2021, well outside the five-day deadline.

I also accept that R.D. is not aware of the Tenant disputing the Notice. There is no evidence before me that the Tenant did dispute the Notice.

Given the Tenant did not pay the outstanding rent or dispute the Notice within five days of January 07, 2021, I find pursuant to section 46(5)(a) of the *Act* that the Tenant is conclusively presumed to have accepted that the tenancy ended January 17, 2021, the corrected effective date of the Notice. The Tenant was required pursuant to section 46(5)(b) of the *Act* to vacate the rental unit by January 17, 2021.

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 at 1:00 p.m. on May 31, 2021.

Based on the undisputed testimony of R.D. and the documentary evidence submitted, I am satisfied that the Tenant currently owes \$4,929.00 in rent. As stated, I accept that the Tenant did not have authority under the *Act* to withhold rent. Therefore, the Landlord is entitled to recover \$4,929.00 in unpaid rent. I note that all rent, including outstanding rent from August of 2020, is due now that the tenancy is ending.

The Landlord can keep the \$595.00 security deposit pursuant to section 72(2) of the *Act*. I issue the Landlord a Monetary Order for the remaining \$4,334.00 pursuant to section 67 of the *Act*.

Conclusion

The Landlord is entitled to an Order of Possession effective at 1:00 p.m. on May 31, 2021. 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 recover \$4,929.00 in unpaid rent. The Landlord can keep the \$595.00 security deposit. I issue the Landlord a Monetary Order for the remaining \$4,334.00. 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: May 25, 2021

Residential Tenancy Branch