



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

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

The Tenant filed their application February 15, 2021 (the “Tenant’s Application”). The Tenant applied to dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 12, 2021 (the “Notice”).

The Landlord filed their application February 18, 2021 (the “Landlord’s Application”). The Landlord applied as follows:

- To recover unpaid rent
- For an Order of Possession based on the Notice
- To recover the filing fee

The Landlord appeared at the hearing with M.H. Nobody appeared at the hearing for the Tenant. I explained the hearing process to the Landlord. I told the Landlord they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Landlord provided affirmed testimony.

The Applications originally named E.C. as a tenant. The Landlord advised that E.C. is not a tenant under the tenancy agreement and therefore I have removed E.C. from the Application which is reflected in the style of cause.

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

The Landlord testified that the hearing package and evidence for the Landlord's Application were served on the Tenant in person February 27, 2021.

The Landlord confirmed receipt of the hearing package and evidence for the Tenant's Application.

Based on the undisputed testimony of the Landlord, I find the Tenant was served with the hearing package and evidence for the Landlord's Application in accordance with sections 88(a) and 89(1)(a) of the *Residential Tenancy Act* (the "Act"). I also find the Tenant received the hearing package and evidence February 27, 2021. I find the Landlord complied with rule 3.1 of the Rules in relation to the timing of service.

I 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, I proceeded with the hearing in the absence of the Tenant.

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

The Landlord was given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence submitted by the parties as well as the testimony of the Landlord. 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 recover the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence. The tenancy started December 24, 2019 and was for a fixed term ending December 31, 2020. The tenancy then became a month-to-month tenancy. Rent is \$2,050.00 per month due on or before the first day of each month. The Tenant paid a security deposit of \$1,025.00. The agreement is signed by the Landlord and Tenant.

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

The Notice states that the Tenant failed to pay \$6,950.00 in rent due February 10, 2021. The Notice is addressed to the Tenant and refers to the rental unit. The Notice is signed and dated by the Landlord. The Notice has an effective date of February 21, 2021.

The Landlord testified that the Notice was served on the Tenant in person February 12, 2021. A Proof of Service signed by a witness was submitted which confirms the Notice was served on the Tenant in person February 12, 2021.

The Landlord confirmed the following. \$6,950.00 in rent was outstanding when the Notice was issued. The Tenant failed to pay \$800.00 of rent for November of 2020 and failed to pay all of rent for December of 2020 as well as January and February of 2021.

The Tenant had submitted a Rent Deferral Agreement which is not signed by the Landlord. The Landlord testified that they did not sign the Rent Deferral Agreement and there was never an agreement reached between the parties.

The Landlord testified that they agreed to the Tenant paying February rent by February 10, 2021. The Landlord testified that they were expecting February rent by February 10, 2021 and when the Tenant failed to pay this, there was no further agreement and all outstanding rent was owing.

The Landlord testified that the Tenant has not paid any rent since being issued the Notice. The Landlord testified that there is currently \$13,100.00 in rent outstanding. The Landlord testified that the Tenant did not have authority under the *Act* to withhold rent.

The Landlord sought an Order of Possession effective May 31, 2021.

The Landlord submitted text messages between the parties, "Tenant Payment Details" and copies of e-transfers for rent from 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...

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 Tenant was obligated to pay \$2,050.00 in rent per month by the first day of each month. Based on the undisputed testimony of the Landlord, I accept that 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 find the Tenant was required to pay \$2,050.00 in rent

each month pursuant to section 26(1) of the *Act* and that section 46(3) of the *Act* does not apply.

I accept the undisputed testimony of the Landlord that they agreed the Tenant could pay February rent by February 10, 2021 and that, when the Tenant did not do so, there was no further agreement and all outstanding rent was owing.

I have reviewed the Tenant Payment Details and note that the Tenant has made the following payments since September 01, 2021:

- \$1,550.00 September 29, 2020
- \$1,050.00 November 17, 2020
- \$1,000.00 November 20, 2020
- \$2,000.00 December 26, 2020
- \$50.00 December 27, 2020
- \$1,250.00 January 25, 2021

The Landlord applied the September 29, 2020 payment to August rent which the Landlord was not permitted to do given the rules around repayment plans for affected rent outlined in the *Covid-19 (Residential Tenancy Act and Manufactured Home Park Tenancy Act) (No. 3) Regulation*.

However, the Tenant was required to pay rent in full for September by the date rent is due. Therefore, the Tenant owed \$12,300.00 in rent for September of 2020 to February of 2021. The Tenant only paid \$6,900.00 in rent for this period. Therefore, on February 10, 2021, the Tenant owed \$5,400.00 in 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*.

Based on the Proof of Service and undisputed testimony of the Landlord, I find the Tenant was served with the Notice in accordance with section 88(a) of the *Act*. Given the Notice was served in person, I find the Tenant received it February 12, 2021. I also note that the Tenant must have received the Notice because the Tenant disputed the Notice and submitted a copy of it.

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*. I acknowledge that the Notice states \$6,950.00 in rent was outstanding when only \$5,400.00 in rent was outstanding;

however, I do not find that this invalidates the Notice. The Tenant should have been aware of the rent amount outstanding.

The Tenant had five days from receipt of the Notice on February 12, 2021 to pay the outstanding rent of \$5,400.00 or dispute the Notice pursuant to section 46(4) of the *Act*.

Based on the undisputed testimony of the Landlord, I accept that the Tenant has not paid any rent since being issued the Notice.

The Tenant disputed the Notice February 15, 2021, within time. However, the Tenant failed to attend the hearing and the Tenant's Application has been dismissed without leave to re-apply. Further, I have no testimony from the Tenant before me about the basis for the dispute of the Notice. Nor do I find the Tenant's evidence to be clear as to a basis for the dispute of the Notice. In the circumstances, I am not satisfied the Tenant had a basis to dispute the Notice. Further, I am satisfied the Landlord had grounds to issue the Notice and uphold the Notice.

Given the above, the Landlord is entitled to an Order of Possession pursuant to section 55(1) of the *Act*. The Landlord is issued an Order of Possession effective at 1:00 p.m. on May 31, 2021.

Given the tenancy is ending, the Landlord is entitled to collect all outstanding rent. I accept the undisputed testimony of the Landlord that \$13,100.00 in rent is currently outstanding. I allow the Landlord to amend the Landlord's Application to request the full amount pursuant to rule 4.2 of the Rules. I accept the undisputed testimony of the Landlord that the Tenant did not have authority under the *Act* to withhold any of this rent. The Landlord is entitled to recover \$13,100.00 in rent.

As the Landlord was successful in the 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 \$13,200.00. The Landlord can keep the \$1,025.00 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 \$12,175.00.

Conclusion

The Tenant's Application is dismissed without leave to re-apply.

The Landlord is issued 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 monetary compensation in the amount of \$13,200.00. The Landlord can keep the \$1,025.0 security deposit. I issue the Landlord a Monetary Order for the remaining \$12,175.00. 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: May 18, 2021

Residential Tenancy Branch