



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL-S, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlords on June 22, 2021 (the “Application”). The Landlords applied as follows:

- For an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 10, 2021 (the “Notice”)
- To recover unpaid rent
- To keep the security deposit
- To recover the filing fee

The Agent appeared at the hearing for the Landlords. Nobody appeared at the hearing for the Tenants. I explained the hearing process to the Agent who did not have questions when asked. I told the Agent they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Agent provided affirmed testimony.

The Landlords submitted evidence prior to the hearing. The Tenants did not submit evidence. I addressed service of the hearing packages and Landlords’ evidence.

The Agent confirmed the hearing packages and evidence were sent to the Tenants at the rental unit by registered mail and that Tracking Numbers 1 and 2 relate to this.

The Landlords submitted the Canada Post tracking information and Customer Receipts showing a package was sent to Tenant K.M. July 17, 2021 and delivered July 20, 2021. The documents show that a package was sent to Tenant B.M. July 17, 2021 and that

notice cards were left in relation to the package July 20, 2021 and July 25, 2021. The documents show Tenant B.M. refused the package August 08, 2021.

Based on the undisputed testimony of the Agent, Customer Receipts and Canada Post tracking information, I am satisfied 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 Canada Post tracking information, I find Tenant K.M. received the package July 20, 2021. Tenant B.M. cannot avoid service by failing to pick up or refusing registered mail. Pursuant to section 90(a) of the *Act*, Tenant B.M. is deemed to have received the hearing package and evidence July 22, 2021. I also find the Landlords complied with rule 3.1 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. The Agent was given an opportunity to present relevant evidence and make relevant submissions. I have considered all documentary evidence and oral testimony of the Agent. 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 based on the Notice?
2. Are the Landlords entitled to recover unpaid rent?
3. Are the Landlords entitled to keep the security deposit?
4. Are the Landlords entitled to recover the filing fee?

Background and Evidence

The Agent testified as follows. There was a verbal tenancy agreement between the parties. The tenancy started September 01, 2019 and is a month-to-month tenancy. Rent is \$950.00 due on the first day of each month. The Tenants paid a \$475.00 security deposit.

The Notice was submitted as evidence. The Notice states that the Tenants failed to pay \$3,375.00 in rent due May 01, 2021. The Notice is addressed to the Tenants and refers to the rental unit. The Notice is signed and dated by Landlord K.S. The Notice has an effective date of May 23, 2021.

The Landlords submitted two Proof of Service forms showing the Notice was attached to the door of the rental unit May 10, 2021. The Proof of Service forms are signed by a witness. The Agent confirmed service of the Notice at the hearing.

The Agent testified as follows. The amount on the Notice should have been \$3,475.00. The Tenants paid \$25.00 on November 06, 2020 and at that time were caught up on rent until October of 2020. The text messages in evidence show that the last time the Tenants paid rent in full was for October of 2020. Since November 06, 2020, the Tenants have only paid \$3,175.00 in rent in total which is shown in the e-transfer document submitted. The Tenants currently owe \$8,225.00 in rent which is calculated as follows:

- \$950.00 per month x 12 months (November 2020 to October 2021)
- = \$11,400.00
- - \$3,175.00 paid by Tenants
- = \$8,225.00

The Agent confirmed the Landlords are seeking to amend the Application to seek the full amount of rent currently outstanding.

The Agent testified as follows. The Tenants have not paid any rent since the Notice was issued. The last rent payment made was on April 14, 2021 which is shown in the e-transfer document. The Agent is not aware of the Tenants disputing the Notice. The Agent is not aware of the Tenants having authority under the *Act* to withhold rent.

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

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...

Based on the undisputed testimony of the Agent, I accept that the Tenants are required to pay \$950.00 in rent per month by the first day of each month pursuant to the verbal tenancy agreement.

Based on the undisputed testimony of the Agent, I am satisfied the Tenants did not have authority under the *Act* to withhold rent. There is no evidence before me that the Tenants did have authority under the *Act* to withhold rent. Therefore, I am satisfied the Tenants were required to pay \$950.00 by the first day of each month from November of 2020 to May of 2021 pursuant to section 26(1) of the *Act*. I also find that section 46(3) of the *Act* does not apply.

Based on the undisputed testimony of the Agent, text messages and e-transfer document, I accept that the Tenants had failed to pay \$3,475.00 in rent as of May 10, 2021 when the Notice was issued. Given the Tenants failed to pay rent as required, the Landlords were entitled to serve the Tenants with the Notice pursuant to section 46(1) of the *Act*.

Based on the undisputed testimony of the Agent and Proof of Service forms, I am satisfied the Notice was served on the Tenants in accordance with section 88(g) of the *Act* on May 10, 2021. Pursuant to section 90(c) of the *Act*, the Tenants are deemed to have received the Notice May 13, 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 is \$100.00 less than what was outstanding; however, this minor error does not invalidate the Notice.

The Tenants had five days from receipt of the Notice on May 13, 2021 to pay the outstanding rent shown on the Notice or dispute the Notice pursuant to section 46(4) of the *Act*.

Based on the undisputed testimony of the Agent and e-transfer document, I accept that the last rent payment made by the Tenants was on April 14, 2021 and therefore I find the Tenants did not pay the outstanding rent shown on the Notice by May 18, 2021.

I accept that the Agent is not aware of the Tenants disputing the Notice. There is no evidence before me that the Tenants did dispute the Notice.

Given the Tenants did not pay the outstanding rent or dispute the Notice within five days of May 13, 2021, I find pursuant to section 46(5)(a) of the *Act* that the Tenants are conclusively presumed to have accepted that the tenancy ended May 23, 2021, the effective date of the Notice. The Tenants were required pursuant to section 46(5)(b) of the *Act* to vacate the rental unit by May 23, 2021.

The Landlords are entitled to an Order of Possession. Pursuant to section 55 of the *Act*, I issue the Landlords an Order of Possession effective two days after service on the Tenants.

Based on the undisputed testimony of the Agent, text messages and e-transfer document, I accept that the Tenants currently owe \$8,225.00 in rent. I allow the Landlords to amend the Application to seek the full amount of rent outstanding pursuant to rule 4.2 of the Rules. As stated, I accept that the Tenants did not have authority under the *Act* to withhold rent. Therefore, the Landlords are entitled to recover \$8,225.00 in unpaid rent.

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

In total, the Landlords are entitled to \$8,325.00. The Landlords can keep the \$475.00 security deposit pursuant to section 72(2) of the *Act*. I issue the Landlords a Monetary Order for the remaining \$7,850.00 pursuant to section 67 of the *Act*.

Conclusion

The Landlords are entitled to 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 \$8,325.00. The Landlords can keep the \$475.00 security deposit. I issue the Landlords a Monetary Order for the remaining \$7,850.00. 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: October 21, 2021

Residential Tenancy Branch