



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNRL-S, 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 August 20, 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
- To recover unpaid rent
- For compensation for monetary loss or other money owed
- To keep the security deposit
- To recover the filing fee

The Agents for the Landlord appeared at the hearing. The Tenants appeared at the hearing. I explained the hearing process to the parties. I told the parties they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

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

The Agents testified that the hearing package was sent to the Tenants at the rental unit by registered mail September 10, 2021 and Tracking Numbers 887 and 873 relate to this. The Agents testified that the hearing package and Landlord’s evidence were sent to the Tenants at the rental unit by registered mail November 04, 2021. The Landlord submitted evidence of service including registered mail receipts for the packages sent to the Tenants with Tracking Numbers 887, 873, 088 and 074 on them.

I looked Tracking Numbers 887 and 873 up on the Canada Post website which shows the packages were sent September 10, 2021 and notice cards were left September 13 and 20, 2021. The website shows the packages were unclaimed and returned.

I looked Tracking Numbers 088 and 074 up on the Canada Post website which shows the packages were sent November 04, 2021 and notice cards were left November 08 and 15, 2021.

The Tenants testified that they only received the hearing package on their door a few days before the hearing. The Tenants testified that they did not receive any of the notice cards left by Canada Post. The Tenants testified that Tenant J.G. has not been living at the rental unit for the past year but is currently living at the rental unit. Tenant J.G. testified that they did not provide a different address to the Landlord when they were living elsewhere.

In reply, the Agents denied that Tenant J.G. lived elsewhere for the past year.

Based on the testimony of the Agents, documentary evidence of service and Canada Post website information, I find the Tenants were served with the hearing package and Landlord's evidence in accordance with sections 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the "Act") on September 10, 2021 and November 04, 2021. The Tenants cannot avoid service by failing to pick up registered mail when they receive notice cards. Pursuant to section 90(a) of the *Act*, the Tenants are deemed to have received the hearing package September 15, 2021 and the evidence November 09, 2021. I find the Landlord complied with rules 3.1 and 3.14 of the Rules in relation to the timing of service.

I do not accept the testimony of the Tenants that they did not receive notice cards from Canada Post because the website shows that eight notice cards were left in relation to the hearing package and evidence. I find it highly unlikely that the website is incorrect about eight separate notice cards being left at the rental unit. Further, I find it highly unlikely that eight separate notice cards went missing between the time they were left at the rental unit and the time the Tenants returned to the rental unit.

I do not accept that Tenant J.G. was not living at the rental unit at the time the notice cards were left. The parties disagreed about this. The Tenants did not point to documentary evidence to support this. Tenant J.G. was living at the rental unit at the time of the hearing. In the circumstances, I am not satisfied based on the evidence

provided or pointed to that Tenant J.G. did not live at the rental unit at the relevant time. Further, even if Tenant J.G. lived elsewhere, I find the Landlord was entitled to serve Tenant J.G. at the rental unit if they were unaware Tenant J.G. was living elsewhere and Tenant J.G. did not provide them with an alternate address for service.

During the hearing, the Tenants raised issues about service and stated that they did not have enough time to prepare for the hearing and submit their evidence. As stated above, the Tenants are deemed to have received the hearing package September 15, 2021, more than two months prior to the hearing, which is ample time prior to hearing. Further, the Landlord complied with the Rules in relation to the timing of service of the hearing package and evidence and therefore I find the Tenants did have sufficient time to prepare for the hearing and submit their evidence. I acknowledge that the Tenants did not in fact receive the hearing package September 15, 2021 or the evidence November 09, 2021 because they did not pick up the registered mail pursuant to the notice cards; however, this is the consequence of the Tenants failing to pick up their registered mail and it does not entitle the Tenants to an adjournment or delay in the proceedings.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence pointed to during the hearing and all oral testimony of the parties. 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?
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 recover the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence. The agreement is between the previous owner of the rental unit and the Tenants, although it states Tenant J.G. moved out in November of 2020. The parties agreed the Landlord purchased the rental unit in April of 2021 and the prior tenancy simply continued. The parties agreed rent is \$850.00 per month due on the first day of each month. The parties agreed the Tenants paid a \$425.00 security deposit.

The Landlord served two 10 Day Notices on the Tenants. The Landlords sought an Order of Possession based on the October 25, 2021 10 Day Notice (the "Notice") and this is what I have considered.

The Notice was submitted as evidence. The Notice states that the Tenants failed to pay \$3,600.00 in rent due October 01, 2021. The Notice is addressed to the Tenants and refers to the rental unit. The Notice is signed and dated by one of the Agents. The Notice has an effective date of November 05, 2021.

The Agents testified that the Notice was posted to the door of the rental unit October 26, 2021. The Tenants did not know when the Notice was posted to the door of the rental unit and said it was probably October 26, 2021.

The Agents testified that the Tenants owed \$3,600.00 in unpaid rent when the Notice was issued and relied on a rent ledger in evidence. The Agents confirmed the unpaid rent was from May 01, 2021 to October of 2021.

The Agents testified that the Tenants have not paid rent since the Notice was issued.

The Tenants denied that they owed \$3,600.00 in unpaid rent when the Notice was issued and relied on receipts submitted by the Landlord at pages 25 to 29 of their evidence. I note that all of the payments shown in the receipts are included in the rent ledger at page 34 of the Landlord's evidence. The Tenants testified that only \$2,050.00 in rent was outstanding when the Notice was issued.

The Tenants acknowledged they did not dispute the Notice.

The Tenants testified that they tried to pay the Landlord \$200.00 in rent and the Landlord denied the payment. The Tenants testified that a third party was going to pay

a further \$1,500.00 in rent for the Tenants; however, an agent for the Landlord told the third party it would be pointless to pay this. The Tenants stated that they have money for rent but were waiting until the hearing to see how they should proceed in relation to rent.

The Tenants did not point to authority under the *Act* to withhold rent in relation to the Notice. The Tenants stated again that the Landlord would not accept rent. The Tenants could not point to evidence to support the position that the Landlord has denied rent payments between August and October of 2021.

In reply, the Agents denied that the Landlord has been denying rent payments. The Agents also denied that they interfered with a third party attempting to pay rent for the Tenants.

The Agents testified that \$4,450.00 in rent was outstanding at the time of the hearing. The Tenants testified that \$4,200.00 in rent was outstanding at the time of the hearing and agreed they had not paid November rent.

The Agents 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 testimony of the parties, I accept that the Tenants are required to pay \$850.00 in rent per month by the first day of each month pursuant to the tenancy agreement.

I find the Tenants did not have authority under the *Act* to withhold rent between May and October of 2021 because the Tenants did not point to any authority under the *Act* to withhold rent. I find the Tenants were required to pay \$850.00 by the first day of each month for May to October of 2021 pursuant to section 26(1) of the *Act* and that section 46(3) of the *Act* does not apply.

Based on the rent ledger at page 34 of the Landlord's evidence, I find the Tenants had failed to pay \$3,600.00 in rent when the Notice was issued. I find the rent ledger credible and note that it includes all of the payments the Tenants said they made in August of 2021. Given the Tenants failed to pay rent as required, the Landlord was entitled to serve them with the Notice pursuant to section 46(1) of the *Act*.

Based on the testimony of the parties, I accept that the Notice was posted to the door of the rental unit October 26, 2021. I find the Tenants were served with the Notice in accordance with section 88(g) of the *Act*. There is no clear evidence before me as to when the Tenants received the Notice and therefore, pursuant to section 90(c) of the *Act*, the Tenants are deemed to have received the Notice October 29, 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*.

The Tenants had five days from receipt of the Notice on October 29, 2021 to pay the outstanding rent of \$3,600.00 or dispute the Notice pursuant to section 46(4) of the *Act*.

I accept that the Tenants have not paid rent since being issued the Notice because the Notice was issued at the end of October and the Tenants agreed they did not pay November rent. Further, the Tenants did not point to evidence that they have paid rent since being issued the Notice.

Based on the testimony of the Tenants, I find they did not dispute the Notice.

I acknowledge that the Tenants took the position that the Landlord has denied rent payments. I do not accept this given the lack of evidence to support the Tenants' testimony on this point. Further, the Landlord submitted letters sent to the Tenants outlining the amount of rent outstanding, that they are not refusing rent and that they are available to take rent. As well, if the Landlord was denying rent payments, the Tenants were required to dispute the Notice and make this argument at a hearing.

Given the Tenants did not pay the outstanding rent or dispute the Notice within five days of October 29, 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 November 08, 2021, the corrected effective date of the Notice. The Tenants were required pursuant to section 46(5)(b) of the *Act* to vacate the rental unit by November 08, 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 two days after service on the Tenants.

I accept that \$4,450.00 in rent was outstanding on the date of the hearing because I accept that \$3,600.00 in rent was outstanding when the Notice was issued and I accept that the Tenants have not paid rent since being issued the Notice. As stated, I accept that the Tenants did not have authority under the *Act* to withhold rent. Therefore, the Landlord is entitled to recover \$4,450.00 in unpaid rent.

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

The Landlord can keep the \$425.00 security deposit pursuant to section 72(1) of the *Act*. I issue the Landlord a Monetary Order for the remaining \$4,125.00 pursuant to section 67 of the *Act*.

Conclusion

The Landlord is issued 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 Landlord can keep the \$425.00 security deposit. I issue the Landlord a Monetary Order for \$4,125.00. 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: December 01, 2021

Residential Tenancy Branch