



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BURR PROPERTIES LTD. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on July 30, 2021 (the “Application”). The Tenant applied as follows:

- To dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 23, 2021 (the “Notice”)

The Agent for the Landlord (the “Agent”) appeared at the hearing. The Tenant did not appear at the hearing, which lasted 17 minutes. 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 Agent provided the correct Landlord name which is reflected in the style of cause.

The Agent confirmed the Landlord is seeking an Order of Possession based on the Notice. The Agent confirmed the Landlord is not seeking a Monetary Order for unpaid rent.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. The Agent confirmed receipt of the hearing package. The Tenant has only submitted a copy of the Notice and therefore the Agent confirmed service of this was not an issue. The Agent testified that the Landlord’s evidence was sent to the rental unit by registered mail November 16, 2021 and provided Tracking Number 524. I looked Tracking Number 524 up on the Canada Post website which shows the package was delivered November 17, 2021.

Based on the undisputed testimony of the Agent and the Canada Post tracking information, I am satisfied the Tenant was served with the Landlord's evidence in accordance with section 88(c) of the *Residential Tenancy Act* (the "Act"). Based on the Canada Post tracking information, I find the Tenant received the package November 17, 2021. I find the Landlord complied with rule 3.15 of the Rules in relation to the timing of service.

I proceeded with the hearing. The Agent was given an opportunity to present relevant evidence and make relevant submissions. I have considered all documentary evidence and the oral testimony of the Agent. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. Is the Landlord entitled to an Order of Possession based on the Notice?

Background and Evidence

The Notice was submitted by the Tenant. The Notice states that the Tenant failed to pay \$9,075.00 in rent due July 01, 2021.

The Agent testified as follows.

There is a verbal tenancy agreement between the parties. The tenancy started April 01, 2018 and is a month-to-month tenancy. Rent is \$700.00 per month due on the first day of each month. The Tenant paid a \$350.00 security deposit and no pet damage deposit.

The Tenant moved from one unit to the rental unit during the tenancy although the Agent is not sure when this occurred.

The Notice was posted to the door of the rental unit July 23, 2021.

The Tenant owed \$9,075.00 in rent when the Notice was issued and the rent ledger in evidence shows this. The unpaid rent was from May 07, 2020 to July of 2021. There was no repayment plan issued for the rent owing from May 07, 2020 to August 17,

2020. The Tenant has not paid rent since being issued the Notice. The Tenant did not have authority under the *Act* to withhold rent. The Landlord submitted a rent ledger showing \$9,075.00 was owing when the Notice was issued and no payments have been made since August 12, 2020.

The Tenant stated in the Application that they were not aware that their rent was not being paid and thought it was being paid by a third party. The Landlord contacted the third party who said they never had a relationship with the Tenant in relation to rent. The Landlord submitted an email from the third party which states that the Tenant never received funding from them.

The Landlord is seeking an Order of Possession effective two days after service on the Tenant.

Analysis

Section 26(1) of the *Act* states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

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.

I accept the undisputed testimony of the Agent and based on it, as well as the documentary evidence referred to, I make the following findings.

I find the Tenant is required to pay \$700.00 in rent per month by the first day of each month pursuant to the verbal tenancy agreement.

I find that, between May of 2020 and July of 2021, the Tenant failed to pay \$9,075.00 in rent. I find the Tenant did not have authority under the *Act* to withhold rent. I note that the Landlord was no longer required to issue the Tenant a repayment plan for unpaid "affected rent" that came due between March 18, 2020 to August 17, 2020 as of July 10, 2021.

I do not accept the statement in the Tenant's Application that they were unaware their rent was not being paid and thought a third party was paying it because the Landlord submitted documentary evidence from the third party showing the Tenant has never received any funding from them. I do not find it reasonable for the Tenant to have believed the third party was paying their rent when they had never received any funding from the third party. I note that numerous payments were made during this tenancy between 2018 and August of 2020.

Given the Tenant did not have authority under the *Act* to withhold rent, section 46(3) of the *Act* does not apply and the Tenant was required to pay rent pursuant to section 26(1) of the *Act*.

Given the Tenant had failed to pay \$9,075.00 in rent as of July 01, 2021, the Landlord was entitled to serve the Tenant with the Notice pursuant to section 46(1) of the *Act*.

I find the Tenant was served with the Notice in accordance with section 88(g) of the *Act* on July 23, 2021. Pursuant to section 90(c) of the *Act*, the Tenant is deemed to have received the Notice July 26, 2021. I note that this information accords with the information provided by the Tenant on the Application.

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 to pay the outstanding rent or dispute the Notice pursuant to section 46(4) of the *Act*.

I find the Tenant has not paid rent since being issued the Notice.

The Tenant did dispute the Notice July 30, 2021; however, the Tenant did not appear at the hearing to explain their basis for the dispute. Further, I do not accept the written statement of the Tenant in the Application as already explained above.

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 and I have not accepted the written statement of the Tenant in the Application, the dispute of the Notice is dismissed without leave to re-apply.

Section 55 of the *Act* states:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52...and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [landlord's notice: non-payment of rent], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

I have found the Notice complies with section 52 of the *Act*. I have dismissed the Tenant's dispute of the Notice and uphold the Notice. Therefore, pursuant to section 55(1) of the *Act*, I issue the Landlord an Order of Possession effective two days after service on the Tenant.

I decline to issue the Landlord a Monetary Order for unpaid rent because the Landlord is not seeking this.

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.

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 03, 2021

Residential Tenancy Branch