



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPITAL REGION HOUSING
CORPORATION and [tenant name suppressed to protect privacy]

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 Landlord on September 03, 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 August 13, 2021 (the “Notice”)
- To recover unpaid rent
- To keep the security deposit
- To recover the filing fee

D.F. and J.C. appeared at the hearing for the Landlord. Nobody appeared at the hearing for the Tenant. I explained the hearing process to D.F. and J.C. who did not have questions when asked. I told D.F. and J.C. they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). D.F. and J.C. 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.

D.F. testified that the hearing package and Landlord’s evidence were sent to the rental unit by registered mail on September 16, 2021. The Landlord submitted registered mail receipts and Canada Post tracking information with Tracking Number 148 on them. D.F. confirmed Tracking Number 148 relates to the hearing package and evidence sent to the Tenant. The Canada Post tracking information shows notice cards were left in

relation to the package September 22, 2021 and September 29, 2021. The tracking information shows the package was unclaimed and returned to the sender.

Based on the undisputed testimony of D.F., registered mail receipts and Canada Post tracking information, I am satisfied the Tenant was 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 16, 2021. The Tenant cannot avoid service by failing to pick up registered mail. Pursuant to section 90(a) of the Act, the Tenant is deemed to have received the hearing package and evidence September 21, 2021. I also find the Landlord 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 Tenant. D.F. and J.C. were given an opportunity to present relevant evidence and make relevant submissions. I have considered all documentary evidence and oral testimony of D.F. and J.C. 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 keep the security deposit?
4. Is the Landlord entitled to recover the filing fee?

Background and Evidence

A written tenancy agreement was submitted. The tenancy started May 01, 2021 and is for a fixed term ending April 30, 2022. Rent is \$1,450.00 due on the first day of each month. The Tenant paid a \$725.00 security deposit.

The Notice was submitted. The Notice states that the Tenant failed to pay \$1,450.00 in rent due August 01, 2021. The Notice is addressed to the Tenant and refers to the rental unit. The Notice does include the wrong city for the rental unit address. The Notice is signed and dated for the Landlord. The Notice has an effective date of August 23, 2021.

D.F. testified that the Notice was served on the Tenant in person August 13, 2021 by J.C. J.C. confirmed the Notice was served on the Tenant in person August 13, 2021.

D.F. confirmed the Tenant did not pay August rent as reflected on the Notice.

D.F. testified that the Tenant has not paid any rent since the Notice was issued. D.F. testified that the Tenant did not have authority under the *Act* to withhold rent. D.F. testified that the Tenant currently owes \$8,700.00 in outstanding rent, \$90.00 for parking and \$140.00 for bank service charges. D.F. testified that parking is not included in rent and the parties have a separate agreement about parking in which parking is \$30.00 per month due on the 21st day of each month. D.F. testified that the bank service charges are for NSF cheques and such charges are outlined at page six of the tenancy agreement and on the parking agreement.

D.F. testified that they are not aware of the Tenant disputing the Notice.

D.F. sought an Order of Possession effective two days after service on the Tenant.

The Landlord submitted the following relevant documentary evidence:

- The Notice
- Receivables and Credit Memos from July to December of 2021
- The tenancy agreement

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.

(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 D.F. and the written tenancy agreement, I accept that the Tenant is required to pay \$1,450.00 in rent per month by the first day of each month.

Based on the undisputed testimony of D.F., I accept that the Tenant did not have authority under the *Act* to withhold rent at any point. There is no evidence before me that the Tenant did have authority under the *Act* to withhold rent at any point.

Therefore, I am satisfied the Tenant was required to pay \$1,450.00 by August 01, 2021 for August rent pursuant to section 26(1) of the *Act*. I also find section 46(3) of the *Act* does not apply.

Based on the undisputed testimony of D.F. and the Receivables and Credit Memos from July to December of 2021, I accept that the Tenant failed to pay \$1,450.00 in rent by August 01, 2021 as required. 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 D.F. and J.C., I accept that the Notice was served on the Tenant in accordance with section 88(a) of the *Act* on August 13, 2021. Given the Notice was served on the Tenant in person, I find the Tenant received the Notice August 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 city of the rental unit address on the Notice is wrong in one of the two spots it is noted; however, I do not find that this invalidates the Notice because the remainder of the rental unit address is correct and I am satisfied the Tenant would have known the Notice applies to the rental unit despite the minor error.

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

I accept the undisputed testimony of D.F. that the Tenant has not paid any rent since the Notice was issued and I find this is supported by the Receivables and Credit Memos from July to December of 2021.

I accept that D.F. 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 August 13, 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 August 23, 2021, the effective date of the Notice. The Tenant was required pursuant to section 46(5)(b) of the *Act* to vacate the rental unit by August 23, 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 Tenant.

Based on the undisputed testimony of D.F. and the Receivables and Credit Memos from July to December of 2021, I accept that the Tenant currently owes \$8,700.00 in rent. I allow the Landlord 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 Tenant did not have authority under the *Act* to withhold rent. Therefore, the Landlord is entitled to recover \$8,700.00 in unpaid rent.

I accept based on the tenancy agreement that parking is not included in rent. I accept the undisputed testimony of D.F. that the Tenant is required to pay \$30.00 per month due on the 21st day of each month for parking pursuant to a separate parking agreement between the parties. I accept the undisputed testimony of D.F. that the Tenant currently owes the Landlord \$90.00 for parking and I find this is supported by the Receivables and Credit Memos from July to December of 2021. I find the Landlord is entitled to recover the \$90.00.

Section 7(1)(d) and 7(2) of the *Residential Tenancy Regulation* state:

7 (1) A landlord may charge any of the following non-refundable fees...

(d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;

(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

Term 2 of the Addendum to the tenancy agreement sets out that the Tenant will be charged \$20.00 for NSF cheques. I accept the undisputed testimony of D.F. that the \$20.00 fee for NSF cheques is also referred to in the parking agreement between the parties. I accept the undisputed testimony of D.F. that the Tenant currently owes \$140.00 for bank service charges and find that this is supported by the Receivables and Credit Memos from July to December of 2021. I find the Landlord is entitled to recover the \$140.00.

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*.

In total, the Landlord is entitled to \$8,930.00. The Landlord can keep the \$725.00 security deposit pursuant to section 72(2) of the *Act*. I issue the Landlord a Monetary Order for the remaining \$8,205.00 pursuant to section 67 of the *Act*.

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.

The Landlord is entitled to \$8,930.00. The Landlord can keep the \$725.00 security deposit. I issue the Landlord a Monetary Order for the remaining \$8,205.00. 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: January 20, 2022

Residential Tenancy Branch