



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding METCAP LIVING MANAGEMENT
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, OPR, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on October 14, 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 September 07, 2021 (the “Notice”)
- To recover unpaid rent
- To keep the security deposit
- To recover the filing fee

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

The Agent testified that the hearing package was sent to the Tenant by registered mail to the rental unit on October 29, 2021. The Agent did not know if the Landlord’s evidence was served on the Tenant. The Landlord submitted registered mail receipts with Tracking Number 807 on them. I looked Tracking Number 807 up on the Canada Post website which shows the package was unclaimed and returned to the sender.

Based on the undisputed testimony of the Agent, registered mail receipts and Canada Post website information, I find the Tenant was served with the hearing package in accordance with section 89(1)(c) of the *Residential Tenancy Act* (the “Act”) on October 29, 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 November 03, 2021, in sufficient time to prepare for, and appear at, the hearing.

Given the Agent did not know if the Landlord’s evidence was served on the Tenant, I am not satisfied it was. I am not satisfied the Landlord complied with rules 3.1 and 3.14 of the Rules in relation to serving evidence. Pursuant to rule 3.17 of the Rules, I exclude the Landlord’s evidence as I find it would be unfair to consider it when I am not satisfied it was served on the Tenant. I have considered the Notice because I accept that it was previously served on the Tenant as outlined below.

Given I was satisfied of service of the hearing package, I proceeded with the hearing in the absence of the Tenant. The Agent was given an opportunity to present relevant evidence and make relevant submissions. I have considered the oral testimony of the Agent. 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

The Agent testified as follows. There is a written tenancy agreement between the parties. The tenancy started February 01, 2021 and was for a fixed term ending January 01, 2022. Rent is \$2,048.27 per month due on the first day of each month. The Tenant paid a \$1,009.00 security deposit and no pet damage deposit.

The Notice states that the Tenant failed to pay \$2,713.00 in rent due September 01, 2021.

The Agent testified as follows.

The Notice was left in the mailbox or mail slot at the rental unit on October 12, 2021.

There was \$2,713.00 in rent outstanding when the Notice was issued. The Agent is not aware of the Tenant having authority under the *Act* to withhold this rent.

The Tenant paid the following after the Notice was issued:

- \$2,000.00 November 02, 2021
- \$1,500.00 February 01, 2022

The Tenant has not made any further rent payments.

The Agent is not aware of the Tenant disputing the Notice.

There is \$7,283.27 in rent currently outstanding. The Agent is not aware of the Tenant having authority under the *Act* to withhold this rent.

The only other requests being made by the Landlord are to recover the \$100.00 filing fee and to keep the \$1,009.00 security deposit.

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

(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 find the following based on it.

The Tenant is required to pay \$2,048.27 in rent per month by the first day of each month pursuant to the written tenancy agreement between the parties.

The Tenant owed \$2,713.00 in rent on September 01, 2021. The Tenant did not have authority under the *Act* to withhold rent. The Tenant was required to pay \$2,713.00 in rent by September 01, 2021 pursuant to section 26(1) of the *Act* and section 46(3) of the *Act* does not apply.

The Tenant failed to pay \$2,713.00 in rent by September 01, 2021. 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*.

The Notice was served on the Tenant in accordance with section 88(f) of the *Act* on October 12, 2021. Pursuant to section 90(d) of the *Act*, the Tenant is deemed to have received the Notice October 15, 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 Tenant had five days from receipt of the Notice on October 15, 2021 to pay the outstanding rent in full or dispute the Notice pursuant to section 46(4) of the *Act*.

The Tenant did not pay any rent by October 20, 2021.

The Tenant did not dispute the Notice.

Given the Tenant did not pay the outstanding rent in full or dispute the Notice by October 20, 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 October 25, 2021, the corrected effective date of the Notice. The Tenant was required pursuant to section 46(5)(b) of the *Act* to vacate the rental unit by October 25, 2021.

The Landlord is entitled to an Order of Possession. Pursuant to section 55(2)(b) of the *Act*, I issue the Landlord an Order of Possession effective two days after service on the Tenant.

The Tenant currently owes \$7,283.27 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. I accept that the Tenant did not have authority under the *Act* to withhold rent. The Landlord is entitled to recover \$7,283.27 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*.

In total, the Landlord is entitled to \$7,383.27. The Landlord can keep the \$1,009.00 security deposit pursuant to section 72(2) of the *Act*. I issue the Landlord a Monetary Order for the remaining \$6,374.27 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 \$7,383.27. The Landlord can keep the \$1,009.00 security deposit. I issue the Landlord a Monetary Order for the remaining \$6,374.27. 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: February 25, 2022

Residential Tenancy Branch