



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, MNR-DR, 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 05, 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 16, 2021 (the “Notice”)
- To recover unpaid rent
- To recover the filing fee

The Landlord appeared at the hearing. Nobody appeared at the hearing for the Tenants. I explained the hearing process to the Landlord who did not have questions when asked. I told the Landlord they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Landlord 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 Landlord testified that the hearing package and evidence were sent to each Tenant at the rental unit by registered mail on October 08, 2021. The Landlord submitted registered mail receipts and confirmed these relate to the hearing package and evidence. The receipts include Tracking Number 564 and Tracking Number 555. The Canada Post website shows the packages were unclaimed.

Based on the undisputed testimony of the Landlord, registered mail receipts and Canada Post website 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*”) on October 08, 2021. The Tenants cannot avoid service by failing to pick up registered mail. Pursuant to section 90(a) of the *Act*, the Tenants are deemed to have received the hearing package and evidence October 13, 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 Tenants. The Landlord was given an opportunity to present relevant evidence and make relevant submissions. I have considered all documentary evidence and oral testimony of the Landlord. 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 recover the filing fee?

Background and Evidence

The Landlord testified as follows.

There is a verbal tenancy agreement between the parties which started eight years ago and is a month-to-month tenancy. Rent is \$975.00 per month due on the first day of each month. No security or pet damage deposits were paid.

The Tenants failed to pay June, July and August 2021 rent.

The Notice was served on the Tenants in person August 16, 2021.

The Tenants paid \$300.00 in rent August 25, 2021 and no rent since. As of the hearing date, the Tenants owe \$8,958.65 in rent including for February 2021. The Tenants did not have authority under the *Act* to withhold rent.

The Tenants did not dispute the Notice.

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

The Landlord submitted the following documentary evidence:

- The Notice which has an effective date of August 27, 2021
- A Proof of Service showing the Notice was served on Tenant J.H. in person August 16, 2021
- Direct Request Worksheet
- A signed statement of the Landlord

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 fail 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 Landlord and based on it, as well as the documentary evidence provided, I find the following.

The Tenants are required to pay \$975.00 in rent per month by the first day of each month.

The Tenants did not have authority under the *Act* to withhold rent at any point. There is no evidence before me that the Tenants did have authority under the *Act* to withhold rent.

The Tenants were required to pay \$975.00 per month by the first day of each month for June, July and August 2021 pursuant to section 26(1) of the *Act* and section 46(3) of the *Act* does not apply.

The Tenants failed to pay June, July and August 2021 rent and therefore owed \$2,925.00 in rent August 01, 2021. Given the Tenants failed to pay rent as required, the Landlord was entitled to serve the Tenants with the Notice pursuant to section 46(1) of the *Act*.

I find the Notice was served on the Tenants in accordance with section 88(a) of the *Act* on August 16, 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 August 16, 2021 to pay the outstanding rent in full or dispute the Notice pursuant to section 46(4) of the *Act*.

I find the Tenants did not pay \$2,925.00 by August 21, 2021.

I find the Tenants did not dispute the Notice. There is no evidence before me that the Tenants did dispute the Notice.

Given the Tenants did not pay the outstanding rent in full or dispute the Notice as required, I find pursuant to section 46(5)(a) of the *Act* that the Tenants are conclusively presumed to have accepted that the tenancy ended August 27, 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 August 27, 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 find the Tenants owe the following rent as of the hearing date:

- June 2021: \$975.00
- July 2021: \$975.00
- August 2021: \$975.00
- September 2021: \$975.00
- October 2021: \$975.00
- November 2021: \$975.00
- December 2021: \$975.00
- January 2022: \$975.00
- February 01 – 11 2022: \$383.03 (\$975.00 / 28 days x 11 days)

- = \$8,183.03

- - \$300.00 paid August 25, 2021

- **TOTAL = \$7,883.03**

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 find the Tenants did not have authority under the *Act* to withhold rent. The Landlord is entitled to recover \$7,883.03 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 \$7,983.03 and is issued a Monetary Order in this amount pursuant to section 67 of the *Act*.

Conclusion

The Landlord is 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 Landlord is entitled to \$7,983.03 and is issued a Monetary Order in this amount. 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: February 11, 2022

Residential Tenancy Branch