



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR (Tenants)
 MNU-DR, OPU-DR, FFL (Landlords)

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties.

The Tenants filed their application January 21, 2022 (the “Tenants’ Application”). The Tenants applied to dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 16, 2022 (the “10 Day Notice”).

The Landlords filed their application February 14, 2022 (the “Landlords’ Application”). The Landlords applied as follows:

- For an Order of Possession based on the 10 Day Notice
- To recover unpaid rent
- For reimbursement for the filing fee

The Landlords appeared at the hearing. The Tenants did not appear at the hearing which lasted 34 minutes. I explained the hearing process to the Landlords. I told the Landlords they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Landlords provided affirmed testimony.

The Tenants submitted the 10 Day Notice and tenancy agreement prior to the hearing. The Landlords submitted evidence prior to the hearing. I addressed service of the hearing packages and evidence.

The Landlords confirmed receipt of the hearing package for the Tenants' Application and confirmed that service of the Tenants' evidence is a non-issue.

The Landlords testified that the hearing package and evidence for the Landlords' Application were sent to the Tenants at the rental unit by registered mail on February 18, 2022. The Landlords submitted customer receipts with Tracking Numbers 715 and 698 on them and confirmed these relate to the hearing package and evidence sent to the Tenants. I looked Tracking Numbers 715 and 698 up on the Canada Post website which shows the packages were delivered February 21, 2022.

Based on the undisputed testimony of the Landlords, customer receipts and Canada Post website information, I find the Tenants were served with the hearing package and evidence for the Landlords' Application in accordance with sections 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the "Act"). Based on the Canada Post website information, I find the Tenants received the packages February 21, 2022. I also find the Landlords 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.

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 Tenants did not appear at the hearing, the Tenants' Application is dismissed without leave to re-apply.

The Landlords were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence and oral testimony of the Landlords. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Landlords entitled to an Order of Possession based on the 10 Day Notice?
2. Are the Landlords entitled to recover unpaid rent?
3. Are the Landlords entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence. The tenancy started March 01, 2021, and is for a fixed term ending August 31, 2021. Rent is \$2,000.00 per month due on the fifth day of each month. The Tenants paid a security deposit of \$1,000.00.

The Landlords sought to keep the security deposit towards unpaid rent.

The 10 Day Notice states the Tenants failed to pay \$2,000.00 in rent due January 05, 2022, and \$820.74 in utilities due January 08, 2022. The Notice is addressed to the Tenants and refers to the rental unit. The Notice is signed and dated by Landlord M.B. The Notice has an effective date of January 26, 2022.

The Landlords testified that the 10 Day Notice was served on the Tenants January 16, 2022, by email and in person to their son at the rental unit. The Landlords testified that the Tenants' son is not an adult. The Landlords testified that they correspond with the Tenants by email about the tenancy.

The Landlords testified that the 10 Day Notice was issued because the Tenants failed to pay rent for January of 2022. The Landlords also testified that the Tenants failed to pay for utilities; however, the Landlords had not sent the Tenants a demand letter prior to the 10 Day Notice being issued.

The Landlords testified that the Tenants have not paid any rent since being issued the 10 Day Notice.

The Landlords testified that the Tenants did not have authority under the *Act* to withhold rent.

The Landlords testified that there is currently \$8,000.00 in rent outstanding for January to April of 2022 and that the Tenants did not have authority under the *Act* to withhold this rent.

The Landlords testified that there is currently \$1,320.74 in utility bills outstanding. The Landlords confirmed all utility bills have been provided to the Tenants.

The Landlords sought an Order of Possession effective April 30, 2022.

The Landlords submitted the following documentary evidence:

- Emails between the parties
- The 10 Day Notice
- Utility bills
- The tenancy agreement

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 landlords 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...

Section 55(1) of the *Act* requires an arbitrator to issue an Order of Possession when tenants dispute a notice to end tenancy and the application is dismissed or the notice is upheld. The notice must comply with section 52 of the *Act*.

I accept the undisputed testimony of the Landlords and based on it, as well as the documentary evidence, I find the following.

I accept that the Tenants were obligated to pay \$2,000.00 in rent by January 05, 2022. I accept that the Tenants did not have authority under the *Act* to withhold rent. There is no evidence before me that the Tenants did have authority under the *Act* to withhold rent. I find the Tenants were required to pay \$2,000.00 in rent by January 05, 2022, pursuant to section 26(1) of the *Act* and that section 46(3) of the *Act* does not apply.

I accept that the Tenants did not pay January rent. Given the Tenants failed to pay rent as required, the Landlords were entitled to serve the Tenants with the 10 Day Notice pursuant to section 46(1) of the *Act*.

Pursuant to section 71(2) of the *Act*, I accept that the Tenants were sufficiently served with the 10 Day Notice by email on January 16, 2022. In coming to this decision, I have considered section 88(j) of the *Act* and section 43(1) of the *Residential Tenancy Regulation* (the "*Regulations*"). Pursuant to section 71(2) of the *Act*, I find the Tenants received the 10 Day Notice January 19, 2022. In coming to this decision, I have considered section 44 of the *Regulations*. I also note that the Tenants must have received the 10 Day Notice because they disputed it January 21, 2022, and submitted a photo of the first page.

Upon a review of the 10 Day 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 Tenants had five days from receipt of the 10 Day Notice on January 19, 2022, to pay the outstanding rent or dispute the 10 Day Notice pursuant to section 46(4) of the *Act*.

I accept that the Tenants have not paid any rent since being issued the 10 Day Notice.

The Tenants disputed the 10 Day Notice January 21, 2022; however, the Tenants did not appear at the hearing and their dispute has been dismissed. Further, the Tenants did not provide any compelling basis in the Tenants' Application for disputing the 10 Day Notice. As well, I find the Landlords had grounds to issue the 10 Day Notice. In the circumstances, I uphold the 10 Day Notice.

The Landlords are entitled to an Order of Possession pursuant to section 55(1) of the *Act* and are issued an Order of Possession effective at 1:00 p.m. on April 30, 2022.

I accept that the Tenants currently owe \$8,000.00 in rent and that they did not have authority under the *Act* to withhold this rent. The Landlords are entitled to recover this unpaid rent.

I accept that the Tenants currently owe \$1,320.74 in utility bills and find the Landlords are entitled to recover this.

Given the Landlords were successful on their application, I award the Landlords reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Landlords are entitled to monetary compensation in the amount of \$9,420.74. The Landlords can keep the \$1,000.00 security deposit pursuant to section 72(2) of the *Act*. Pursuant to section 67 of the *Act*, I issue the Landlords a Monetary Order for the remaining \$8,420.74.

Conclusion

The Tenants' Application is dismissed without leave to re-apply.

The Landlords are granted an Order of Possession effective at 1:00 p.m. on April 30, 2022. 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 Landlords are entitled to monetary compensation in the amount of \$9,420.74. The Landlords can keep the \$1,000.00 security deposit. I issue the Landlords a Monetary Order for the remaining \$8,420.74. 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: April 27, 2022

Residential Tenancy Branch