



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR-MT, OLC (Tenant)
 MNRL, OPR, FFL (Landlord)

Introduction

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

The Tenant filed their application April 02, 2022 (the “Tenant’s Application”). The Tenant applied as follows:

- To dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities
- For more time to dispute the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement

The Landlord filed their application April 13, 2022 (the “Landlord’s 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 April 04, 2022 (the “Notice”)
- To recover unpaid rent
- To recover the filing fee

The Landlord attended the hearing. Nobody attended the hearing for the Tenant. I explained the hearing process to the Landlord. 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.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence for the Landlord's Application.

The Landlord testified that the hearing package and evidence for the Landlord's Application were served on the Tenant in person April 28, 2022.

Based on the undisputed testimony of the Landlord, I find the Tenant was served with the hearing package and evidence for the Landlord's Application in accordance with section 88(a) of the *Residential Tenancy Act* (the "Act") on April 28, 2022. I find the Landlord complied with rule 3.1 of the Rules in relation to the timing of service.

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

A written tenancy agreement was submitted. The tenancy started October 15, 2020. The tenancy is a month-to-month tenancy. Rent is \$1,200.00 per month due on the first day of each month. The Landlord testified that the Tenant did not pay a security deposit.

The Notice was submitted. The Notice states that the Tenant failed to pay \$5,125.00 in rent due March 15, 2022. The Notice is dated April 04, 2022, with an effective date of April 14, 2022.

The Landlord testified that they put the Notice in the mail slot or mailbox of the rental unit, or posted it to the door, April 04, 2022. The Landlord submitted a Proof of Service stating the Notice was put in the mailbox of the rental unit April 04, 2022.

In relation to the grounds for the Notice, the Landlord testified that rent was actually due on the 15th day of each month. The Landlord also testified that rent changed to \$1,150.00 in January of 2022.

The Landlord testified that \$5,125.00 in rent was outstanding when the Notice was issued and \$8,575.00 is currently outstanding. The Landlord testified that no rent was paid after the Notice was issued. The Landlord testified that the Tenant did not have authority under the *Act* to withhold rent at any point.

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

The Landlord submitted the following further documentary evidence:

- Records of payments made by the Tenant
- Text messages between the parties
- Written statements of the Landlord

Analysis

Pursuant to rule 7.3 of the Rules, I dismiss the Tenant's Application without leave to re-apply because the Tenant did not appear at the hearing and the Landlord did appear to address these matters.

In relation to the Landlord's Application, 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 note that the Landlord was unprepared for the hearing and did not have their evidence with them during the hearing. The Landlord had difficulty providing some of the relevant information and gave conflicting information during the hearing. Given these issues, I do have some concerns about the reliability and credibility of the Landlord's testimony. However, the Tenant did not appear at the hearing to dispute the Landlord's testimony. Further, the Tenant did not submit any documentary evidence that calls into question the Landlord's testimony and in fact submitted text messages that support there was unpaid rent owing to the Landlord. In the circumstances, I accept the undisputed testimony of the Landlord and based on it, as well as the documentary evidence, I find the following.

I accept rent was \$1,200.00 per month due on the first day of each month pursuant to the tenancy agreement. I also accept rent changed to \$1,150.00 in January of 2022 and became due on the 15th day of each month pursuant to an agreement between the parties.

I accept the Tenant had failed to pay \$5,125.00 in rent by March 15, 2022, as stated on the Notice. I accept the Tenant did not have authority under the *Act* to withhold this

rent. I find the Tenant was required to pay \$5,125.00 in rent by March 15, 2022, pursuant to section 26(1) of the *Act* and that section 46(3) of the *Act* does not apply.

Given the Tenant did not pay rent as required, the Landlord was entitled to issue the Notice pursuant to section 46(1) of the *Act*.

I accept the Notice was put in the mailbox of the rental unit April 04, 2022, and find it was served in accordance with section 88(f) of the *Act*. Pursuant to section 90(d) of the *Act*, the Tenant is deemed to have received the Notice April 07, 2022.

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 April 07, 2022, to pay the outstanding rent or dispute the Notice pursuant to section 46(4) of the *Act*.

I accept no rent was paid after the Notice was issued.

The Tenant filed a dispute of a 10 Day Notice April 02, 2022. The Tenant disputed a 10 Day Notice served April 01, 2022. The Tenant submitted a copy of the 10 Day Notice being disputed and it is dated April 01, 2022. There is no indication on the file that the Tenant amended the Tenant's Application to include a dispute of the Notice. The Tenant did not appear at the hearing to make arguments about whether the Tenant's Application was amended or whether they disputed the Notice. In the circumstances, I find the Tenant did not dispute the Notice.

Given the Tenant did not pay the outstanding rent or dispute the Notice, section 46(5) of the *Act* applies. The Tenant is conclusively presumed to have accepted the Notice and was required to vacate the rental unit by April 17, 2022, the corrected effective date of the Notice.

Given the above, the Landlord is entitled to an Order of Possession effective two days after service on the Tenant pursuant to section 55(2) of the *Act*.

I accept the Tenant currently owes \$8,575.00 in rent. I accept the Tenant did not have authority under the *Act* to withhold this rent. The Landlord is entitled to recover this rent.

The Landlord is entitled to recover the \$100.00 filing fee pursuant to section 72(1) of the *Act* because they have been successful on their application.

In total, the Landlord is entitled to \$8,675.00 and is issued a Monetary Order 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 \$8,675.00 and is issued a Monetary Order in this amount. 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: July 28, 2022

Residential Tenancy Branch