



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SHERINGHAM CONSTRUCTION & MANAGEMENT
CORP and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL, OPC, MNRL, MNDCL, OPR

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord May 03, 2022 (the “Application”). The Landlord applied as follows:

- For an Order of Possession based on a One Month Notice to End Tenancy for Cause dated March 20, 2022 (the “Notice”)
- To recover unpaid rent
- For compensation for monetary loss or other money owed
- For an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent dated September 03, 2022 (the “10 Day Notice”)
- For reimbursement for the filing fee

The Agent for the Landlord appeared at the hearing. Nobody appeared at the hearing for the Tenants. I explained the hearing process to the Agent. 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 Tenants did not submit evidence. I addressed service of the hearing package and Landlord’s evidence.

The Agent testified that the hearing package and Landlord’s evidence were sent to the Tenants at the rental unit by registered mail August 24, 2022. The Landlord submitted documentary evidence of service and the Agent confirmed Tracking Numbers 441 and 455 relate to the packages sent to the Tenants. I looked Tracking Numbers 441 and

455 up on the Canada Post website which shows they were unclaimed after notice cards were left August 25 and August 30, 2022.

Based on the undisputed testimony of the Agent, documentary evidence of service and Canada Post website information, I find the Tenants were 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"). 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 Landlord's evidence August 29, 2022. I find the Landlord did not comply with rule 3.1 of the Rules in relation to the timing of service of the hearing package; however, I proceeded with the Application because I am satisfied 15 days was sufficient notice for the Tenants to call into the hearing. I find the Landlord complied with rule 3.14 of the Rules in relation to the timing of service of the evidence.

Given I was satisfied of service, I proceeded with the hearing in the absence of the Tenants. The Agent was given an opportunity to present relevant evidence and make relevant submissions. I have considered all 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 compensation for monetary loss or other money owed?
4. Is the Landlord entitled to an Order of Possession based on the 10 Day Notice?
5. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted. The tenancy started June 01, 2017, and was for a fixed term ending May 31, 2018. The tenancy then became a month-to-month tenancy. The Agent testified that rent has been \$1,357.00 since last year. Rent is due on or before the first day of each month. The Tenants paid a \$625.00 security deposit and \$625.00 pet damage deposit.

The Notice

The Notice was submitted. The Notice is addressed to the Tenants and refers to the rental unit. The Notice is signed and dated by the Agent. The Notice has an effective date of April 30, 2022. The grounds for the Notice are:

Reason for this One Month's Notice to End Tenancy: (check all boxes that apply)

- ☒ Tenant has allowed an unreasonable number of occupants in the unit/site/property/park.
- ☐ Tenant is repeatedly late paying rent
- ☒ Tenant or a person permitted on the property by the tenant has (check all boxes that apply):
 - ☒ significantly interfered with or unreasonably disturbed another occupant or the landlord.
 - ☒ seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
 - ☒ put the landlord's property at significant risk
- ☐ Tenant's rental unit/site is provided by the employer to the employee to occupy during the term of employment and employment has ended.
- ☒ Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property
- ☒ Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the landlord.
- ☒ Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely jeopardize a lawful right or interest of another occupant or the landlord.
- ☒ Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.

The Agent testified that the Notice was attached to the door of the rental unit March 20, 2022.

The Agent testified that they are not aware of the Tenants disputing the Notice.

The Agent sought an Order of Possession effective at the end of September.

Unpaid rent

The Agent testified that the Tenants owe \$2,914.00 in rent up until the end of September. The Agent testified that the Tenants did not have authority under the *Act* to withhold rent.

NSF and late fees

The Agent testified that the Tenants have incurred late and NSF fees for July, August and September.

Term 10 of the tenancy agreement states that the Tenants must pay \$25.00 for late payment or NSF fees.

Analysis

The Notice

The Notice was issued pursuant to section 47(1) of the *Act*.

Based on the undisputed testimony of the Agent, I find the Tenants were served with the Notice in accordance with section 88(g) of the *Act* on March 20, 2022. Pursuant to section 90(c) of the *Act*, the Tenants are deemed to have received the Notice March 23, 2022.

Pursuant to section 47(4) of the *Act*, the Tenants had ten days from receiving the Notice to dispute it. I accept the undisputed testimony of the Agent that they are not aware of the Tenants disputing the Notice. There is no evidence before me showing the Tenants disputed the Notice. In the circumstances, I find the Tenants did not dispute the Notice.

Given the Tenants did not dispute the Notice, pursuant to section 47(5) of the *Act*, the Tenants are conclusively presumed to have accepted that the tenancy ended April 30, 2022, the effective date of the Notice. The Tenants were required to vacate the rental unit by April 30, 2022.

I have reviewed the Notice and find it complies with section 52 of the *Act* in form and content as required by section 47(3) of the *Act*.

Given the above, I find 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 at 1:00 p.m. on September 30, 2022.

Given the above decision, it is not necessary to consider the 10 Day Notice.

Unpaid rent

Section 7(1) of the *Act* states:

7 (1) If a...tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

Section 26(1) of the *Act* states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Based on the written tenancy agreement and undisputed testimony of the Agent, I accept that the Tenants are required to pay \$1,357.00 in rent on or before the first day of each month pursuant to the tenancy agreement. I accept the undisputed testimony of the Agent that the Tenants have failed to pay \$2,914.00 in rent up until September and did not have authority under the *Act* to withhold this rent. I award the Landlord \$2,914.00 in unpaid rent.

NSF and late fees

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

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 10 of the tenancy agreement provides for a \$25.00 fee for late payment or NSF fees. I accept the undisputed testimony of the Agent that the Tenants have incurred

late or NSF fees for July, August and September and award the Landlord \$75.00 for these.

Filing fee

Given the Landlord has been successful in the Application, the Landlord is entitled to reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

Summary

In total, the Landlord is entitled to \$3,089.00 and is issued a Monetary Order in this amount.

Conclusion

The Landlord is issued an Order of Possession effective at 1:00 p.m. on September 30, 2022. This Order must be served on the Tenants. If the Tenants do not comply with the Order, it may be filed in the Supreme Court and enforced as an order of that Court.

The Landlord is issued a Monetary Order for \$3,089.00. 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: September 13, 2022

Residential Tenancy Branch