



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR (Tenant)
 OPR-DR, MNR-DR, FLL (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 May 20, 2022. The Tenant applied as follows:

- To dispute a 10 Day Notice to End Tenancy Issued for Unpaid Rent or Utilities issued in May (the “May Notice”)

The Landlord filed two applications, one on May 25, 2022, and one on June 28, 2022. The Landlord sought the following in the first application:

- An Order of Possession based on the May Notice
- To recover unpaid rent
- To recover the filing fee

The Landlord sought the following in the second application:

- An Order of Possession based on a 10 Day Notice to End Tenancy Issued for Unpaid Rent or Utilities issued in June (the “June Notice”)
- To recover unpaid rent

S.S. appeared at the hearing for the Landlord. Nobody appeared at the hearing for the Tenant. I explained the hearing process to S.S. I told S.S. they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). S.S. provided affirmed testimony.

Tenant's application

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.

The Tenant did not appear at the hearing and did not provide documentary evidence for the hearing. In the circumstances, I dismiss the Tenant's application without leave to re-apply.

Service of Landlord's applications

The Landlord submitted evidence prior to the hearing. I addressed service of the hearing packages and evidence for the Landlord's applications.

S.S. testified that the hearing package and evidence for the first application were sent to the Tenant by registered mail on June 09, 2022. S.S. provided Tracking Number 097 for this package. The Landlord submitted documentary evidence of service. I looked Tracking Number 097 up on the Canada Post website which shows the package was delivered June 30, 2022.

S.S. testified that the hearing package and evidence for the second application were sent to the Tenant by registered mail on August 18, 2022. S.S. provided Tracking Number 463 for this package. The Landlord submitted documentary evidence of service. I looked Tracking Number 463 up on the Canada Post website which shows the package was unclaimed after a notice card was left August 19, 2022.

Based on the undisputed testimony of S.S., documentary evidence and Canada Post website information, I am satisfied the Tenant was served with the hearing package and evidence for the Landlord's first 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 Tenant received the package June 30, 2022. I find the Landlord complied with rule 3.1 of the Rules in relation to the timing of service.

Based on the undisputed testimony of S.S., documentary evidence and Canada Post website information, I am satisfied the Tenant was served with the hearing package and

evidence for the Landlord's second application in accordance with sections 88(c) and 89(1)(c) of the *Act*. 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 package August 23, 2022. Given the date the package was sent, I find the Landlord did not comply with rule 3.1 of the Rules. However, I find the Tenant received the package August 23, 2022, more than one month prior to the hearing, and therefore in sufficient time to prepare for and appear at the hearing.

Given I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. S.S. 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 May Notice?
2. Is the Landlord entitled to recover unpaid rent?
3. Is the Landlord entitled to recover the filing fee for the first application?
4. Is the Landlord entitled to an Order of Possession based on the June Notice?

Background and Evidence

A written tenancy agreement between the Landlord and Tenant was submitted. The agreement started April 01, 2022, and is for a fixed term ending March 31, 2023. Rent is \$2,670.00 due on the first day of each month. The Tenant paid a \$1,305.00 security deposit. The agreement is signed by both parties.

S.S. asked that the Landlord be allowed to keep the security deposit towards unpaid rent.

The May Notice was submitted. The May Notice states that the Tenant failed to pay \$2,670.00 in rent due May 01, 2022. The May Notice is addressed to the Tenant and refers to the rental unit. The May Notice is signed and dated by an agent for the Landlord. The May Notice has an effective date of May 21, 2022.

S.S. testified that the May Notice was sent to the Tenant by registered mail on May 12, 2022. S.S. provided Tracking Number 824 for this. The Landlord submitted documentary evidence of service of the May Notice. I looked Tracking Number 824 up on the Canada Post website which shows the package was delivered May 16, 2022.

S.S. testified that the Tenant did not pay rent for May which is reflected on the May Notice. S.S. testified that the Tenant has not paid any rent since May of 2022. S.S. testified that the Tenant has never had authority under the *Act* to withhold rent.

S.S. testified that the Tenant currently owes rent for May to September of 2022 for a total of \$13,350.00.

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

I heard S.S. on the June Notice; however, I do not find it necessary to details S.S.'s testimony given my decision below on the May Notice.

The Landlord submitted the following relevant documentary evidence:

- Copies of returned cheques issued by the Tenant for rent
- Correspondence between the parties
- Copies of e-transfers from the Tenant

Analysis

Section 7 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.

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.

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

The Tenant owes \$2,670.00 in rent by the first day of each month pursuant to the tenancy agreement.

The Tenant failed to pay rent from May to September of 2022. The Tenant did not have authority under the *Act* to withhold rent for these months. In particular, the Tenant was required to pay \$2,670.00 in rent for May by May 01, 2022, pursuant to section 26(1) of the *Act*, and section 46(3) of the *Act* does not apply.

Given the Tenant failed to pay rent for May, the Landlord was entitled to issue the May Notice pursuant to section 46(1) of the *Act*.

I find the Tenant was served with the May Notice in accordance with section 88(c) of the *Act* on May 12, 2022. I find the Tenant received the May Notice May 16, 2022.

Upon a review of the May 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 Tenant had five days from receipt of the May Notice to pay the outstanding rent or dispute the May Notice pursuant to section 46(4) of the *Act*.

I find the Tenant has not paid any rent since being issued the May Notice and therefore did not pay the outstanding rent within five days of receiving the May Notice.

The Tenant disputed the May Notice on May 20, 2022, within time. However, the Tenant did not appear at the hearing to provide a basis for disputing the May Notice and did not provide documentary evidence in this regard. Given this, the Tenant's dispute of the May Notice has been dismissed without leave to re-apply.

Section 55(1) of the *Act* states:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52...and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I have found the May Notice complies with section 52 of the *Act*. I have dismissed the Tenant's dispute of the May Notice and I uphold the May Notice. Therefore, pursuant to section 55(1) of the *Act*, I issue the Landlord an Order of Possession effective two days after service on the Tenant.

Given the decision on the May Notice, it is unnecessary to consider the June Notice.

I have already accepted that the Tenant failed to pay rent from May to September of 2022 and did not have authority under the *Act* to withhold rent for these months. I find the Tenant owes the Landlord \$13,350.00 in rent.

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

In total, the Tenant owes the Landlord \$13,450.00. The Landlord can keep the \$1,305.00 security deposit pursuant to section 72(2) of the *Act*. The Landlord is issued a Monetary Order for \$12,145.00 for the remaining amount 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 can keep the security deposit and is issued a Monetary Order for \$12,145.00. 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: October 04, 2022

Residential Tenancy Branch