



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 October 17, 2022 (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 October 11, 2022 (the “Notice”)
- To recover unpaid rent
- To recover the filing fee

The Landlord appeared at the hearing with G.W., their Agent. Nobody appeared at the hearing for the Tenant. I explained the hearing process to the Landlord and G.W. I told the Landlord and G.W. they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Landlord and G.W. provided affirmed testimony.

The Landlord submitted evidence prior to the hearing. The Tenant did not submit evidence. I addressed service of the hearing package and Landlord’s evidence.

The Landlord and G.W. advised that the hearing package and Landlord’s evidence were sent to the Tenant by registered mail and that tracking number ending 035 relates to this. The Landlord submitted a Canada Post delivery confirmation showing the Tenant signed for the package December 21, 2022.

Based on the undisputed testimony of the Landlord and G.W. as well as the Canada Post delivery confirmation, I am satisfied the Tenant was 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*”) and received these December 21, 2022, 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. The Landlord and G.W. were 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 recover the filing fee?

Background and Evidence

A written tenancy agreement was submitted. The tenancy started August 01, 2015. Rent is \$1,300.00 per month. The Landlord and G.W. confirmed rent is due on the first day of each month. The Tenant paid a \$650.00 security deposit.

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

The Notice was submitted. The Notice states that the Tenant failed to pay \$5,200.00 in rent due October 01, 2022. The Notice has an effective date of October 21, 2022.

The Landlord and G.W. testified that the Notice was served on the Tenant in person October 11, 2022.

The Landlord and G.W. testified that the Tenant has failed to pay rent since July of 2022 and has never had authority under the *Act* to withhold rent.

The Landlord and G.W. were not aware of the Tenant disputing the Notice.

The Landlord and G.W. did not know what was currently outstanding in utilities, G.W. said \$558.00 was outstanding in October.

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

The Landlord submitted the following documentary evidence:

- Direct Request Worksheet
- Proof of Service for the Notice
- Utility Notice

Analysis

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

The Tenant is required to pay \$1,300.00 in rent per month by the first day of each month pursuant to the tenancy agreement.

The Tenant has not had authority under the *Act* to withhold rent at any point. The Tenant was required to pay \$1,300.00 by the first day of each month from July to October of 2022 pursuant to section 26(1) of the *Act* and section 46(3) of the *Act* does not apply.

The Tenant failed to pay rent from July to October 2022 as required. Given the Tenant failed to pay rent as required, the Landlord was entitled to serve the Tenant with the Notice pursuant to section 46(1) of the *Act*.

The Notice was served on the Tenant in accordance with section 88(a) of the *Act* on October 11, 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 October 11, 2022, to pay the outstanding rent or dispute the Notice pursuant to section 46(4) of the *Act*. The Tenant did neither.

Given the Tenant did not pay the outstanding rent or dispute the Notice within five days of October 11, 2022, pursuant to section 46(5)(a) of the *Act*, the Tenant is conclusively presumed to have accepted that the tenancy ended October 21, 2022, the effective date of the Notice. The Tenant was required pursuant to section 46(5)(b) of the *Act* to vacate the rental unit by October 21, 2022.

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 Tenant.

The Tenant currently owes the Landlord \$9,100.00 in unpaid rent for July of 2022 to January of 2023.

I decline to award the Landlord unpaid utilities because the Landlord and G.W. did not know what amount is currently outstanding and the amount provided verbally during the hearing is different than the amount provided on the Monetary Order Worksheet. The request to recover unpaid utilities is not explicitly set out in the Application and therefore the Landlord can re-apply for this when they have the necessary information to do so.

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

The Tenant owes the Landlord \$9,200.00. The Landlord can keep the \$650.00 security deposit pursuant to section 72(2) of the *Act*. I issue the Landlord a Monetary Order for the remaining \$8,550.00 pursuant to section 67 of the *Act*.

Conclusion

The Landlord is entitled to 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 \$9,200.00. The Landlord can keep the \$650.00 security deposit. I issue the Landlord a Monetary Order for the remaining \$8,550.00. 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: January 31, 2023

Residential Tenancy Branch