



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

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 January 22, 2023 (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 (the “Notice”)
- To recover unpaid rent
- To recover the filing fee

The Landlord appeared at the hearing with A.F., their son. Nobody appeared at the hearing for the Tenant. I explained the hearing process to A.F. and the Landlord (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.

I note that this matter and another matter were assigned the same hearing date, time and call-in codes such that there was another Arbitrator and other parties in the hearing at the outset. The other Arbitrator and other parties left the hearing and I proceeded with the Landlords. I confirmed through the teleconference system that only the Landlords and I were present for this matter.

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

The Landlords confirmed the hearing package and their evidence were sent to the Tenant at the rental unit by registered mail and provided Tracking Number 960. The

Landlords had submitted documentary evidence of service with Tracking Number 960 on it. I looked Tracking Number 960 up on the Canada Post website which shows the package was sent February 01, 2023, and unclaimed after two notice cards were left.

Based on the undisputed testimony of the Landlords, documentary evidence of service and Canada Post website information, I am satisfied the Tenant was served with the hearing package and Landlords' evidence in accordance with sections 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the "Act") on February 01, 2023. 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 hearing package and evidence February 06, 2023. I also find the Landlords 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 Landlords 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

The Landlords provided the following testimony, submissions and evidence.

There is a verbal tenancy agreement between the parties. The tenancy started June 01, 2022, and is a month-to-month tenancy. Rent is \$1,200.00 due on the first day of each month. The Tenant paid a \$600.00 security deposit.

The Notice was submitted. The Notice is signed by the Landlord but not dated. The second page of the Notice states that the Tenant failed to pay \$3,600.00 in rent but does not state when this rent was due. The Landlords acknowledged these dates were possibly missing from the Notice issued to the Tenant.

The Landlords testified that the Tenant currently owes \$8,400.00 in rent. The Landlords were not aware of the Tenant having any authority under the *Act* to withhold rent.

The Landlords submitted documentary evidence.

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...**

Section 52 of the *Act* states:

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and **dated** by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [tenant's notice], **state the grounds for ending the tenancy...**
- (e) when given by a landlord, **be in the approved form.**

In relation to the Notice, it is not dated and does not state when rent owing was due and therefore does not state the grounds for the Notice. Further, RTB forms must be completed properly and include all information requested to be "in the approved form". Given the Notice does not comply with section 52 of the *Act* as required by section

46(2) of the *Act*, the Notice is not an effective Notice and is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

I accept the undisputed testimony of the Landlords that the Tenant currently owes \$8,400.00 in rent and did not have authority under the *Act* to withhold this rent. I allow the Landlords to amend the Application to seek the full amount of rent outstanding pursuant to rule 4.2 of the Rules. The Landlord is entitled to recover \$8,400.00 in unpaid rent.

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

In total, the Landlord is entitled to \$8,500.00 and is issued a Monetary Order in this amount pursuant to section 67 of the *Act*.

Conclusion

The Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

The Landlord is entitled to \$8,500.00 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: March 20, 2023

Residential Tenancy Branch