



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, MNR-DR

Introduction

This hearing occurred by conference call based on an Application for Dispute Resolution filed by the Landlord September 10, 2022 (the “Application”). The Landlord applied:

- For an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 02, 2022 (the “Notice”)
- To recover unpaid rent

This was a review hearing of a Decision issued December 01, 2022. A new hearing of the Application was ordered in a Review Decision issued December 07, 2022.

M.N. appeared at the hearing for the Landlord. Nobody appeared at the hearing for the Tenant.

The Landlord provided evidence for the hearing. The Tenant did not provide evidence. I addressed service of documents. M.N. testified as follows. The hearing package for the first hearing was served on the Tenant in person October 29, 2022. The Landlord’s evidence was served on the Tenant in person December 10, 2022, and April 10, 2023. The Review Decision and hearing package for the review hearing was served on the Tenant in person December 10, 2022. The Landlord provided Proof of Service documents for the October 29th and December 10th service dates.

Based on the undisputed testimony of M.N. and Proof of Service documents, I find the Tenant was served with all materials in accordance with sections 88(a) and 89(1)(a) of the *Residential Tenancy Act* (the “Act”). I find the timing of service sufficient to allow the Tenant to have prepared for, and appeared at, the review hearing.

Given I was satisfied of service, I continued with the hearing without the Tenant. M.N. 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?

Background and Evidence

A written tenancy agreement was provided. The tenancy started April 30, 2021, and was for a fixed term ending April 30, 2023. Rent is \$3,900.00 due by the first day of each month. The Tenant paid a \$1,950.00 security deposit.

M.N. said the Landlord wants to keep the security deposit towards unpaid rent.

The Notice was provided. The Notice states the Tenant failed to pay \$3,900.00 in rent due September 01, 2022. The Notice has an effective date of September 12, 2022.

M.N. testified that the Notice was served on the Tenant in person September 02, 2022.

M.N. confirmed the Tenant did not pay September rent and this is the basis for the Notice.

M.N. testified that, after the Notice was issued, the Tenant paid \$2,400.00 on September 07, 2022, and \$4,800.00 on January 15, 2023.

M.N. testified that the Tenant did not have authority under the *Act* to withhold rent.

M.N. was not aware of the Tenant disputing the Notice.

M.N. testified that, as of the hearing date, the Tenant owed \$24,000.00 in unpaid rent.

M.N. asked for an Order of Possession effective two days after service on the Tenant.

The Landlord provided the following documentary evidence:

- A Proof of Service for the Notice
- Direct Request Worksheet
- A receipt for the September 07, 2022, payment
- An Agreement signed by the Tenant acknowledging \$24,000.00 in rent owing up until April of 2023

Analysis

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

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 sections 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...

The Tenant owes \$3,900.00 per month by the first day of each month for rent under the written tenancy agreement.

The Tenant has never had authority under the *Act* to withhold rent. The Tenant had to pay \$3,900.00 in rent for September by September 01, 2022, under section 26(1) of the *Act*. Section 46(3) of the *Act* does not apply.

The Tenant did not pay September rent. The Landlord was entitled to serve the Notice on the Tenant under section 46(1) of the *Act*.

The Notice was served on the Tenant in person September 02, 2022, in accordance with section 88(a) of the *Act*.

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 receiving the Notice on September 02, 2022, to pay all the outstanding rent or dispute the Notice under section 46(4) of the *Act*.

The Tenant did not pay the full \$3,900.00 in rent owing within five days of September 02, 2022, and therefore did not cancel the Notice under section 46(4)(a) of the *Act*.

The Tenant did not dispute the Notice.

Section 46(5)(a) of the *Act* applies and the Tenant is conclusively presumed to have accepted that the tenancy ended September 12, 2022, the effective date of the Notice. The Tenant had to move out of the rental unit by September 12, 2022, under section 46(5)(b) of the *Act*.

The Landlord is entitled to an Order of Possession under 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 \$27,900.00 in unpaid rent up until May of 2023. I allow the Landlord to amend the Application to seek the full amount of rent outstanding under rule 4.2 of the Rules. The Landlord is entitled to a Monetary Order for unpaid rent.

I acknowledge that I am issuing the Landlord an Order of Possession on two days notice and a Monetary Order for May rent. I do so because rent for May was due on the first day of the month and because of how late in May the Landlord is receiving the Order of Possession.

The Tenant owes the Landlord \$27,900.00. The Landlord can keep the \$1,950.00 security deposit under section 72(2) of the *Act*. I issue the Landlord a Monetary Order for the remaining \$25,950.00 under section 67 of the *Act*.

The Decision issued December 01, 2022, is set aside under section 82(3) 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 \$27,900.00. The Landlord can keep the \$1,950.00 security deposit. I issue the Landlord a Monetary Order for the remaining \$25,950.00. 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: May 22, 2023

Residential Tenancy Branch