



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, OPRM-DR

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlords on December 19, 2018 (the "Application"). The Landlords sought an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 7, 2018 (the "Notice"). The Landlords also sought to recover unpaid rent and reimbursement for the filing fee.

The Landlords had filed an amendment to the Application dated January 17, 2019 changing the amount of the monetary claim (the "Amendment").

The Agent attended the hearing for the Landlords. Nobody attended for the Tenants. I explained the hearing process to the Agent who did not have questions when asked. The Agent provided affirmed testimony.

The Landlords had submitted evidence prior to the hearing. The Tenants had not submitted evidence. I addressed service of the hearing package and Landlord's evidence.

The Agent testified that the hearing package and evidence were sent to Tenant M.W. by registered mail on January 5, 2019. He provided Tracking Number 1. I looked this up on the Canada Post website which shows a notice card was left January 8th and January 15th. The website also shows the package was returned because the recipient is not located at the address. The Agent testified that the package was sent to the rental unit and that the Tenants still live at the rental unit. The Landlords submitted the receipt for this package. The Customer Receipt includes the rental unit address.

The Agent testified that the Amendment was sent to Tenant M.W. at the rental unit by registered mail on January 18, 2019. He provided Tracking Number 2. The Canada

Post website shows a notice card was left in relation to this package on January 23, 2019. The Landlords submitted the receipt for this package. The Customer Receipt includes the rental unit address.

The Agent testified that the hearing package and evidence were sent to Tenant T.G. at the rental unit by registered mail on January 5, 2019. He provided Tracking Number 3. I looked this up on the Canada Post website which shows a notice card was left January 8th and January 15th. The website also shows the package was returned because the recipient is not located at the address. The Landlords submitted the receipt for this package. The Customer Receipt includes the rental unit address.

The Agent testified that the Amendment was sent to Tenant T.G. at the rental unit by registered mail. He provided Tracking Number 4. The Canada Post website shows a notice card was left in relation to this package on January 23, 2019. The Landlords submitted the receipt for this package. The Customer Receipt includes the rental unit address.

Based on the undisputed testimony of the Agent, and the evidence submitted, I find the Tenants were served with the hearing package, evidence and Amendment in accordance with sections 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the "Act"). The Tenants are deemed to have received the packages pursuant to section 90 of the *Act*. I also find these documents were served in sufficient time to allow the Tenants to prepare for, and appear at, the hearing.

I acknowledge that the Canada Post website shows the recipients do not live at the address. However, the Agent testified that he sent the packages to the rental unit address and knows the Tenants are still living there. The evidence submitted shows the packages were sent to the rental unit address. I find the undisputed testimony of the Agent and evidence submitted more reliable than the notation on the Canada Post website. I am satisfied that the packages were sent to the rental unit and that the Tenants continue to reside at the rental unit.

As 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, make relevant submissions and ask relevant questions. I have considered all documentary evidence and oral testimony of the Agent. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Landlords entitled to an Order of Possession based on the Notice?
2. Are the Landlords entitled to a Monetary Order for unpaid rent?
3. Are the Landlords entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence. It is between the Landlords and Tenants in relation to the rental unit. The tenancy started August 10, 2018 and is for a fixed term ending August 31, 2019. Rent is \$5,400.00 per month due on the first day of each month. The Tenants paid a \$2,700.00 security deposit and \$2,700.00 pet deposit. The agreement is signed by the Landlords and Tenants.

The Agent advised that the Landlords are seeking to keep the security deposit and pet deposit towards unpaid rent.

The Notice states that the Tenants failed to pay \$10,563.00 that was due November 1, 2018. The Notice is addressed to the Tenants and refers to the rental unit. It is signed and dated by the Agent. It has an effective date of December 17, 2018. The Agent testified that the Tenants were aware he acted as agent for the Landlords as he is the one who rented the unit to them and he dealt with the Tenants throughout the tenancy.

The Agent testified that both pages of the Notice were posted to the door of the rental unit and put in the mailbox on December 7, 2018. He relied on a text message submitted as evidence to show the Tenants received the Notice.

The Agent testified that the following rent is currently outstanding:

- \$5,163.00 for November of 2018
- \$5,400.00 for December of 2018
- \$5,400.00 for January of 2019
- \$5,400.00 for February of 2019

The Agent testified that the only payment made by the Tenants since November of 2018 was \$2,500.00 on January 20, 2019. The Agent testified that the Tenants did provide cheques but that these were returned due to insufficient funds. The Agent referred to

the text messages submitted to show the Tenants failed to pay rent. He also referred to documents relating to the NSF cheques.

I note that the text messages submitted show the parties, including Tenant M.W. referring to the hearing. The texts show Tenant M.W. acknowledging receipt of the Notice. The texts support that there is outstanding rent.

The documentation shows a cheque for January rent in the amount of \$5,900.00 was cancelled by the Tenant. It also shows a rent cheque for \$9,700.00 issued January 3, 2019 was returned due to insufficient funds.

The Agent testified that he is not aware of the Tenants disputing the Notice. He testified that the Tenants did not have authority under the *Act* to withhold rent.

Analysis

Section 26(1) of the *Act* requires tenants 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 landlords to end a tenancy where tenants have failed 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.

...

Based on the written tenancy agreement and undisputed testimony of the Agent, I accept that the Tenants were obligated to pay \$5,400.00 in rent by the first day of each month. I accept the undisputed testimony of the Agent that the Tenants did not have a right to withhold rent under the *Act*. I find this is supported by the text messages from Tenant M.W. which seem to indicate rent was not paid due to the Tenants not having sufficient funds to pay rent. I find the Tenants were required to pay \$5,400.00 by November 1, 2018 for November rent and \$5,400.00 by December 1, 2018 for December rent under section 26(1) of the *Act* and that section 46(3) of the *Act* does not apply.

I accept the undisputed testimony of the Agent and his outline of unpaid rent. I find the Tenants owed \$5,163.00 in rent for November and \$5,400.00 in rent for December when the Notice was issued on December 7, 2018.

I note that the Notice shows \$10,563.00 was due November 1, 2018. The Agent advised that this was a mistake and should have been \$10,563.00 due December 1, 2018. I do not find this mistake affects the validity of the Notice. The Notice was issued December 7, 2018. At this point, the Tenants did owe \$10,563.00 in rent. I find it clear from the text messages that Tenant M.W. was aware there was outstanding rent. I find the Tenants would have known what rent was outstanding and when it was due. I do not find the mistake on the Notice prejudices the Tenants. Further, if the Tenants took issue with the amount stated on the Notice, or date it was due, the Tenants should have disputed the Notice.

Given the Tenants failed to pay rent as required, the Landlords were entitled to serve them with the Notice pursuant to section 46(1) of the *Act*.

Based on the undisputed testimony of the Agent, I find the Tenants were served with the Notice in accordance with sections 88(f) and 88(g) of the *Act*. Pursuant to section

90(c) and (d) of the *Act*, I find the Tenants received the Notice December 10, 2018. The text messages support that the Tenants received the Notice.

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 Tenants had five days from receipt of the Notice on December 10, 2018 to pay or dispute it under section 46(4) of the *Act*. I accept the undisputed testimony of the Agent that the Tenants did not dispute the Notice. I have no evidence before me that they did. I also accept the undisputed testimony of the Agent that the only payment made after the Notice was issued was in the amount of \$2,500.00 on January 20, 2019, well after the five-day time limit.

Given the Tenants did not pay the full amount outstanding or dispute the Notice as required, I find pursuant to section 46(5)(a) of the *Act* that the Tenants are conclusively presumed to have accepted that the tenancy ended December 20, 2018, the corrected effective date of the Notice. The Tenants were required under section 46(5)(b) of the *Act* to vacate the rental unit by December 20, 2018.

The Landlords are entitled to an Order of Possession. Pursuant to section 55(3) of the *Act*, I grant the Landlords an Order of Possession effective two days after service on the Tenant.

As noted, I accept the outline of the outstanding rent and find the Tenants currently owe \$18,863.00 in unpaid rent. I find the Landlords are entitled to monetary compensation in this amount. I acknowledge that I have awarded the Landlords an Order of Possession effective two days after service on the Tenants and rent for February. I find this appropriate given when rent was due and given the date. In my view, the Landlords are entitled to full rent for February.

As the Landlords were successful in this application, I grant the Landlords \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*.

The Landlords are therefore entitled to monetary compensation in the amount of \$18,963.00. Pursuant to section 72(2) of the *Act*, the Landlords are permitted to keep the \$2,700.00 security deposit and \$2,700.00 pet deposit towards the outstanding rent. Pursuant to section 67 of the *Act*, I grant the Landlords a Monetary Order in the amount of \$13,563.00.

Conclusion

The Landlords are entitled to an Order of Possession effective two days after service on the Tenants. This Order must be served on the Tenants and, if the Tenants do not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

The Landlords are entitled to monetary compensation in the amount of \$18,963.00. The Landlords are permitted to keep the \$2,700.00 security deposit and \$2,700.00 pet deposit towards the outstanding rent. I grant the Landlords a Monetary Order in the amount of \$13,563.00. 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: February 08, 2019

Residential Tenancy Branch