



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Schema Investments Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR, OPRM-DR, FFL (Landlord)
CNR-MT, RP, PSF, OLC (Tenant)

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 the application February 10, 2020 (the “Tenant’s Application”). The Tenant applied as follows:

- To dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities;
- For more time to file the dispute;
- For repairs to be made to the rental unit;
- For the Landlord to provide services or facilities required by the tenancy agreement or law; and
- For an order that the Landlord to comply with the Act, regulation and/or the tenancy agreement.

The Landlord filed the application February 18, 2020 (the “Landlord’s Application”). The Landlord applied for an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 03, 2020 (the “Notice”), to recover unpaid rent and for reimbursement for the filing fee.

The Agent for the Landlord appeared at the hearing. The Agent confirmed the correct name of the Landlord which is reflected in the style of cause. I explained the hearing process to the Agent who did not have questions when asked. The Agent provided affirmed testimony.

The Tenant did not appear at the hearing which lasted 23 minutes.

The Landlord submitted evidence prior to the hearing. I addressed service of the hearing packages and evidence.

The Agent testified that the Landlord did not receive a hearing package or evidence for the Tenant's Application.

The Agent testified that the hearing package and evidence for the Landlord's Application were sent to the rental unit by registered mail on March 03, 2020. The Landlord had submitted a customer receipt with Tracking Number 1 on it. I looked Tracking Number 1 up on the Canada Post website which shows the package was delivered and signed for March 05, 2020.

Based on the undisputed testimony of the Agent, customer receipt and Canada Post website information, I find the Tenant was served with the hearing package and evidence 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 am satisfied the Tenant received the package March 05, 2020, in sufficient time to prepare for, and appear at, the hearing.

I also note that the Tenant would have been aware of the hearing as the Tenant's Application was scheduled for the same date and time.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenant.

Rule 7.3 of the Rules of Procedure (the "Rules") states that an arbitrator can dismiss an Application for Dispute Resolution without leave to re-apply if a party fails to attend the hearing.

Given the Tenant did not appear at the hearing, I have insufficient evidence before me as to the basis for the Tenant's Application. In the absence of further evidence from the Tenant, the Tenant's Application is dismissed without leave to re-apply.

The Agent was given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence of the Landlord and oral testimony of the Agent. 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 reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence. The agreement is not signed. The Agent testified that there is a verbal tenancy agreement between the parties that is reflected in the written agreement submitted. The tenancy started May 01, 2019 and is a month-to-month tenancy. Rent is \$1,400.00 per month due on the first day of each month. The Tenant paid a security deposit of \$700.00 and pet damage deposit of \$700.00.

The Agent advised that the Landlord is seeking to keep the security and pet damage deposits towards unpaid rent.

The Notice states the Tenant failed to pay \$1,400.00 in rent due February 01, 2020. It is addressed to the Tenant and refers to the rental unit. It is signed and dated by the Agent. It has an effective date of February 18, 2020.

The Landlord submitted a customer receipt with Tracking Number 2 on it in relation to service of the Notice. The Agent confirmed both pages of the Notice were sent by registered mail to the rental unit February 03, 2020. I looked Tracking Number 2 up on the Canada Post website which shows the package was delivered and signed for February 04, 2020.

The Tenant disputed the Notice February 10, 2020.

The Agent testified as follows. The Tenant did not pay February rent which is reflected on the Notice. The Tenant has not paid any rent since being issued the Notice.

The Agent sought to recover unpaid rent for February, March and April. The Agent testified that the Tenant did not have authority under the *Act* to withhold rent for these months.

The Agent sought an Order of Possession effective April 30, 2020.

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...

Section 55(1) of the *Act* requires an arbitrator to issue an Order of Possession when a tenant disputes a notice to end tenancy and the application is dismissed or the notice is upheld. The notice must comply with section 52 of the *Act*.

Based on the undisputed testimony of the Agent, I am satisfied the Tenant was obligated to pay \$1,400.00 in rent per month by the first day of each month. Based on the undisputed testimony of the Agent, I am satisfied the Tenant did not have authority under the *Act* to withhold rent. There is no evidence before me that the Tenant did. I find the Tenant was required to pay \$1,400.00 in rent by February 01, 2020 under section 26(1) of the *Act* and that section 46(3) of the *Act* does not apply.

Based on the undisputed testimony of the Agent, I am satisfied the Tenant did not pay February rent. 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*.

Based on the undisputed testimony of the Agent, customer receipt and Canada Post website information, I am satisfied the Tenant was served with the Notice in accordance with section 88(c) of the *Act*. Based on the Canada Post website information, I am satisfied the Tenant received the Notice February 04, 2020.

Upon a review of the 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 Notice on February 04, 2020 to pay the outstanding rent or dispute the Notice under section 46(4) of the *Act*.

Based on the undisputed testimony of the Agent, I am satisfied the Tenant had not paid any rent since being issued the Notice.

The Tenant disputed the Notice February 10, 2020, within time given the deadline fell on a weekend and fell to the Monday. However, the Tenant failed to attend the hearing and the Tenant's Application has been dismissed without leave to re-apply. Therefore, pursuant to section 55(1) of the *Act*, the Landlord is entitled to an Order of Possession.

I issue the Landlord an Order of Possession pursuant to section 55(1) of the *Act*. The Order of Possession is effective at 1:00 p.m. on April 30, 2020.

Based on the undisputed testimony of the Agent, I am satisfied the Tenant has not paid rent for February, March or April. I am satisfied the Tenant owes the Landlord \$4,200.00 in unpaid rent. The Landlord is entitled to recover this.

As the Landlord was successful in this application, I award the Landlord reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Landlord is entitled to monetary compensation in the amount of \$4,300.00. The Landlord can keep the \$700.00 security deposit and \$700.00 pet damage deposit pursuant to section 72(2) of the *Act*. Pursuant to section 67 of the *Act*, I issue the Landlord a Monetary Order for the remaining \$2,900.00.

Conclusion

The Tenant's Application is dismissed without leave to re-apply.

The Landlord is issued an Order of Possession effective at 1:00 p.m. on April 30, 2020. 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

SUBJECT TO THE MINISTERIAL ORDER REFERRED TO ON THE LAST PAGE OF THIS DECISION.

The Landlord is entitled to monetary compensation in the amount of \$4,300.00. The Landlord can keep the \$700.00 security deposit and \$700.00 pet damage deposit. I issue the Landlord a Monetary Order for the remaining \$2,900.00. 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: April 20, 2020

Residential Tenancy Branch