



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding STAZO PROPERTIES INC. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, OPR, FFL, MNDCL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on September 23, 2020 (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 September 09, 2020 (the “Notice”);
- To recover unpaid rent;
- For compensation for monetary loss or other money owed;
- To keep the security deposit; and
- To recover the filing fee.

T.S. and Z.K. attended the hearing for the Landlord. Nobody attended for the Tenant. I explained the hearing process to T.S. and Z.K. who did not have questions when asked. T.S. and Z.K. provided affirmed testimony.

T.S. confirmed the correct name of the Landlord and correct rental unit address, both of which are reflected on the front page of this decision.

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

Z.K. testified as follows. The hearing package and evidence were sent to the rental unit September 26, 2020 by registered mail. The evidence was posted to the door of the rental unit and placed in the mailbox September 26, 2020.

T.S. and Z.K. testified that the Tenant is not living at the rental unit, someone else is living at the rental unit and they are not sure when the Tenant vacated. Z.K. testified

that the Tenant never gave notice ending the tenancy and nobody connected to the rental unit has told the Landlord the Tenant does not live there or has moved out.

The Landlord submitted a Canada Post receipt with a tracking number on it. The Landlord submitted photos to support service of the evidence.

Given the Tenant did not provide the Landlord notice ending the tenancy and given nobody connected to the rental unit has told the Landlord the Tenant does not live there or has moved out, I am satisfied the Landlord was entitled to serve the Tenant at the rental unit.

Based on the undisputed testimony of Z.K., Canada Post receipt and photos, I am satisfied the Tenant was served with the hearing package and evidence in accordance with sections 88(c), 88(f), 88(g) and 89(1)(c) of the *Residential Tenancy Act* (the "Act"). I am also satisfied the Landlord complied with rule 3.1 of the Rules of Procedure (the "Rules") in relation to the timing of service.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. T.S. and Z.K. were given an opportunity to present relevant evidence and make relevant submissions. I have considered all documentary evidence and oral testimony of T.S. and Z.K. 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 compensation for monetary loss or other money owed?
4. Is the Landlord entitled to keep the security deposit?
5. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence. The tenancy started August 01, 2018 and was for a fixed term of one year. T.S. confirmed the tenancy then became a month-to-month tenancy. Rent is \$1,350.00 per month due on the first day of each

month. The Tenant paid a \$675.00 security deposit. T.S. confirmed the agreement is signed for the Landlord and by the Tenant.

The Notice states that the Tenant failed to pay \$1,350.00 in rent due September 01, 2020. The Notice is addressed to the Tenant and refers to the rental unit. It is signed and dated by T.S. It has an effective date of September 23, 2020.

T.S. testified that all pages of the Notice were posted to the door of the rental unit and placed in the mailbox. T.S. and Z.K. testified that this was done September 09, 2020. Photo to support service were submitted.

Z.K. testified as follows. The Tenant failed to pay September rent. The Tenant did not have authority under the *Act* to withhold September rent. The Tenant has not paid rent since being issued the Notice. The Tenant did not dispute the Notice.

Z.K. further testified as follows. The Landlord is seeking to recover unpaid rent from July to November. The Tenant failed to pay rent from July to November. The Tenant did not have authority under the *Act* to withhold rent from July to November. A repayment plan was not issued.

The Landlord sought compensation for unpaid utilities. Based on a letter in evidence, Z.K. confirmed the Landlord had not yet been charged utilities by the City due to the Tenant's failure to pay them and that the Landlord would not be charged these until the end of the year.

The Landlord submitted an outline of rent amounts paid and owing for 2020.

Analysis

Section 26(1) of the *Act* states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 46 of the *Act* allows a landlord to end a tenancy when a tenant has failed to pay rent and states:

- 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 am satisfied based on the undisputed testimony of T.S. and Z.K., as well as the documentary evidence referred to above, of the following.

The Tenant is required to pay \$1,350.00 in rent by the first day of each month pursuant to the tenancy agreement. The Tenant did not have authority under the *Act* to withhold September rent. There is no evidence before me that the Tenant did. I find the Tenant was required to pay \$1,350.00 in rent by September 01, 2020 pursuant to section 26(1) of the *Act* and that section 46(3) of the *Act* does not apply.

The Tenant failed to pay September 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*.

I am satisfied the Notice was served on the Tenant in accordance with sections 88(f) and 88(g) of the *Act*. I also accept this was done September 09, 2020. Pursuant to sections 90(c) and (d) of the *Act*, the Tenant is deemed to have received the Notice September 12, 2020.

Based on my review of the Notice, I am satisfied the Notice 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 September 12, 2020 to pay or dispute it under section 46(4) of the *Act*. I am satisfied the Tenant has not paid any rent since being issued the Notice. I am also satisfied Z.K. is not aware of the Tenant disputing the Notice. There is no evidence before me showing that the Tenant did dispute the Notice.

Given the Tenant did not pay the outstanding rent or dispute the Notice by September 17, 2020, I find pursuant to section 46(5)(a) of the *Act* that the Tenant is conclusively presumed to have accepted that the tenancy ended September 23, 2020, 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 September 23, 2020.

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. I acknowledge that I have also issued the Landlord a Monetary Order for unpaid rent for November. I find this appropriate given rent is due on the first day of each month and given the day of the month this decision is being issued.

I am satisfied the Tenant failed to pay rent from July to November. I am satisfied the Tenant did not have authority under the *Act* to withhold rent for these months. I am satisfied the Tenant owes the Landlord \$6,750.00. The Landlord is entitled to recover this amount.

I acknowledge that some of the above is "affected rent" as that term is defined in the *Covid-19 (Residential Tenancy Act and Manufactured Home Park Tenancy Act) (No. 3) Regulation*. I also acknowledge that repayment plans apply to "affected rent" when a landlord seeks to end a tenancy based on "affected rent". However, here, the tenancy

is ending based on September rent, which is not “affected rent”. Given the tenancy is ending, all outstanding rent is due.

I dismiss the Landlord’s request for compensation for unpaid utilities with leave to re-apply. Section 7 of the *Act* states:

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Based on the letter in evidence, and testimony of Z.K., I am not satisfied the Landlord has incurred a loss in relation to unpaid utilities yet. Therefore, the Landlord is not entitled to compensation at this time. The Landlord can re-apply for this if they do incur the loss in the future. This decision does not extend any time limits set out in the *Act*.

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

The Landlord is therefore entitled to monetary compensation in the amount of \$6,850.00. The Landlord is permitted to keep the \$675.00 security deposit pursuant to section 72(2) of the *Act*. The Landlord is issued a Monetary Order for the remaining \$6,175.00 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 monetary compensation in the amount of \$6,850.00. The Landlord is permitted to keep the security deposit. The Landlord is issued a Monetary Order for the remaining \$6,175.00. 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: November 20, 2020

Residential Tenancy Branch