



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GURDEV HOLDINGS LTD. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL, OPR, MNRL-S

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on September 18, 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 04, 2020 (the “Notice”);
- To recover unpaid rent;
- To keep the security and/or pet damage deposits; and
- To recover the filing fee.

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

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

The Agent testified that the hearing package and evidence were given to the Tenant in person September 25, 2020.

Based on the undisputed testimony of the Agent, I am satisfied the Tenant was served with the hearing package and evidence in accordance with sections 88(a) and 89(1)(a) 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. The Agent was given an opportunity to present relevant evidence and make relevant

submissions. 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. 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 keep the security and/or pet damage deposits?
4. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Agent testified as follows. There is a written tenancy agreement in this matter. The tenancy started June 01, 2019 and was for a fixed term of one year. It then became a month-to-month tenancy. Rent is \$800.00 per month due on the first day of each month. The Tenant paid a \$400.00 security deposit and \$400.00 pet damage deposit.

The Notice states that the Tenant failed to pay \$800.00 in rent due September 01, 2020. The Notice is addressed to the Tenant and refers to the rental unit. It is dated September 04, 2020 and has an effective date of September 14, 2020. The Agent testified that the copy of the Notice served on the Tenant was signed.

The Agent testified that all pages of the Notice were posted to the door of the rental unit September 04, 2020. A photo of this is in evidence.

The Agent testified as follows in relation to unpaid rent. The parties came to a verbal agreement about the Tenant paying rent when the pandemic occurred. This was going okay but then the Tenant started falling behind. An issue arose in summer and the Tenant stopped paying rent. The Landlord sent the Tenant a letter about a repayment plan August 20, 2020; however, the Tenant never responded. The Tenant failed to pay September rent. The Notice was issued based on the failure to pay September rent. The Tenant did not have authority under the *Act* to withhold September rent. The Tenant was not permitted to withhold September rent pursuant to the verbal agreement between the parties. The Tenant has not paid any rent since being issued the Notice. The Tenant did not dispute the Notice.

The Landlord is seeking to recover unpaid rent as follows:

- \$200.00 for July 2020;
- \$800.00 for August 2020;
- \$800.00 for September 2020;
- \$800.00 for October 2020; and
- \$800.00 for November 2020.

The Agent testified as follows. The Tenant failed to pay the above rent amounts. The Tenant did not have authority under the *Act* to withhold the above rent amounts. The Tenant was not permitted to withhold the above rent amounts pursuant to the verbal agreement between the parties.

The Agent sought an Order of Possession effective two days after service on the Tenant. The Agent sought to keep the security and pet damage deposits towards unpaid rent.

The Landlord submitted the letter sent to the Tenant August 20, 2020 about unpaid rent of \$1,000.00.

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...

Based on the undisputed testimony of the Agent, I am satisfied the Tenant is required to pay \$800.00 in rent by the first day of each month pursuant to the tenancy agreement. Based on the undisputed testimony of the Agent, I am satisfied 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 \$800.00 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.

I am also satisfied based on the undisputed testimony of the Agent that the Tenant did not have authority to withhold September rent pursuant to an agreement between the parties.

Based on the undisputed testimony of the Agent, I am satisfied 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*.

Based on the undisputed testimony of the Agent and photo, I am satisfied the Notice was served on the Tenant in accordance with section 88(g) of the *Act*. I also accept

that this was done September 04, 2020. Pursuant to section 90(c) of the *Act*, the Tenant is deemed to have received the Notice September 07, 2020.

Based on the undisputed testimony of the Agent about the Notice being signed, as well as 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 07, 2020 to pay or dispute it under section 46(4) of the *Act*. Based on the undisputed testimony of the Agent, I am satisfied the Tenant has not paid any rent since being issued the Notice. I am also satisfied the Agent 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 07, 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 17, 2020, the corrected 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 17, 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 am satisfied based on the undisputed testimony of the Agent that the Tenant has failed to pay the following amounts:

- \$200.00 for July 2020;
- \$800.00 for August 2020;
- \$800.00 for September 2020;
- \$800.00 for October 2020; and
- \$800.00 for November 2020.

I am satisfied based on the undisputed testimony of the Agent that the Tenant did not have authority under the *Act* to withhold rent for these months. I am satisfied based on the undisputed testimony of the Agent that the Tenant was not permitted to withhold the above amounts pursuant to the verbal agreement between the parties.

Given I have issued the Landlord an Order of Possession effective two days after service, I award the Landlord November rent up until November 16, 2020 being \$426.66. Therefore, I am satisfied the Landlord is entitled to recover \$3,026.66 in total.

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”. Further, given the tenancy is ending, all outstanding rent is due.

As the Landlord was 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 \$3,126.66. The Landlord is permitted to keep the security and pet damage deposits pursuant to section 72(2) of the *Act* and \$800.00 is deducted from the amount owing. The Landlord is issued a Monetary Order for the remaining \$2,326.66 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 \$3,126.66. The Landlord is permitted to keep the security and pet damage deposits. The Landlord is issued a Monetary Order for the remaining \$2,326.66. 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 16, 2020

Residential Tenancy Branch