



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, OPRM-DR, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on November 17, 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 November 06, 2020 (the “Notice”);
- To recover unpaid rent; and
- For reimbursement for the filing fee.

This was an adjourned direct request.

The Landlord attended the hearing with J.L. and R.L. to assist. Nobody attended the hearing for the Tenant. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The Application included two additional tenants. The last name of the first additional tenant was listed as “Unknown”. The full name of the second additional tenant was listed as “Unknown Unknown”. J.L. testified that the Landlord only has a tenancy agreement with the Tenant and that the Tenant allowed the two additional tenants to move into the rental unit. J.L. and R.L. confirmed the two additional tenants are actually occupants of the rental unit and that there is no tenancy agreement between the Landlord and these individuals.

I told the parties I would remove the two additional tenants from the Application for two reasons. First, the Application must include the full legal names of the parties and cannot include unknown individuals. Second, occupants should not be named on the

Application as occupants have no legal rights or obligations under the tenancy agreement between the Landlord and Tenant. I explained to the parties that a monetary order would only apply to the Tenant if issued because the Tenant is the only individual required to pay rent under the tenancy agreement between the Landlord and Tenant. I also explained that an order of possession would apply to the Tenant and all occupants of the rental unit if issued. Given these explanations, J.L. advised that the Landlord was fine with the two additional tenants being removed from the Application.

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

J.L. testified that the hearing package and evidence were served on the Tenant in person on December 20, 2020. J.L. confirmed the video in evidence shows service. R.L. confirmed he was present and confirmed the hearing package and evidence were served on the Tenant in person on December 20, 2020. The Landlord submitted a video of the package being left in the rental unit in the presence of the Tenant.

Based on the undisputed testimony of J.L. and R.L. as well as the video, 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 also find 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 parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all documentary evidence and oral testimony of the parties. 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 tenancy started October 01, 2019 and is a month-to-month tenancy. Rent in the tenancy agreement is \$1,350.00 per month; however, J.L. testified that rent is \$1,300.00 per month due on the first day of each month. The tenancy agreement shows the Tenant paid a \$675.00 security deposit; however, J.L. testified that the Tenant did not pay a security deposit. The agreement is signed for the Landlord and by the Tenant and includes an addendum.

The Notice states that the Tenant failed to pay \$3,900.00 in rent due September 01, October 01 and November 01 of 2020. The Notice is addressed to the Tenant and refers to the rental unit. It is signed and dated for the Landlord. It has an effective date of November 16, 2020.

J.L. testified that the Notice was posted to the door of the rental unit November 06, 2020. J.L. testified that the photos in evidence show service of the Notice. R.L. testified that he was present for service of the Notice and confirmed the Notice was posted to the door of the rental unit November 06, 2020.

J.L. testified that the Tenant has not paid rent since May of 2020. J.L. testified that the Tenant has not paid any rent since being issued the Notice. J.L. testified that she is not aware of the Tenant disputing the Notice. J.L. testified that the Tenant did not have authority under the *Act* to withhold rent that she is aware of.

J.L. testified that \$14,300.00 in rent is currently outstanding for 11 months from May of 2020 to March of 2021. J.L. confirmed the Landlord is seeking to recover the full amount of rent outstanding.

R.L. asked for an Order of Possession effective two days after service on the Tenant. Given this, R.L. confirmed the Landlord is not seeking March rent at this time.

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 a landlord to end a tenancy when 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 undisputed testimony of J.L., I accept that the Tenant was required to pay \$1,300.00 in rent per month by the first day of each month pursuant to the tenancy agreement. Based on the undisputed testimony of J.L., I accept that the Tenant did not have authority under the *Act* to withhold rent for September to November of 2020. There is no evidence before me that the Tenant did have authority to withhold rent. I find the Tenant was required to pay \$1,300.00 in rent by the first day of each month for September to November of 2020 pursuant to section 26(1) of the *Act* and that section 46(3) of the *Act* does not apply.

Based on the undisputed testimony of J.L., I accept that the Tenant failed to pay rent for September to November of 2020. 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 J.L. and R.L. as well as the photos, I accept that the Notice was served on the Tenant in accordance with section 88(g) of the *Act* on November 06, 2020. Pursuant to section 90(c) of the *Act*, the Tenant is deemed to have received the Notice November 09, 2020.

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 receipt of the Notice on November 09, 2020 to pay the outstanding rent or dispute the Notice pursuant to section 46(4) of the *Act*.

I accept the undisputed testimony of J.L. that the Tenant did not pay the outstanding rent.

I accept the undisputed testimony of J.L. that she is not aware of the Tenant disputing the Notice. There is no evidence before me that the Tenant did dispute the Notice.

Given the Tenant did not pay the outstanding rent or dispute the Notice, I find pursuant to section 46(5)(a) of the *Act* that the Tenant is conclusively presumed to have accepted that the tenancy ended November 19, 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 November 19, 2020.

Given the above, 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 accept the undisputed testimony of J.L. that \$14,300.00 in rent is currently outstanding. I accept the undisputed testimony of J.L. that the Tenant did not have authority under the *Act* to withhold rent that she is aware of. There is no evidence before me that the Tenant did have authority under the *Act* to withhold rent.

The Landlord is only seeking 10 months of unpaid rent being \$13,000.00 given the Landlord is seeking an Order of Possession effective two days after service on the Tenant. Pursuant to rule 4.2 of the Rules, I allow the Landlord to amend the Application

to seek the full amount of rent outstanding. I am satisfied the Landlord is entitled to recover \$13,000.00 in unpaid rent.

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 \$13,100.00 and I issue the Landlord a Monetary Order in this amount 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 Order of Possession applies to occupants of the rental unit.

The Landlord is entitled to a Monetary Order in the amount of \$13,100.00. 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: March 09, 2021

Residential Tenancy Branch