



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ABOUGOUSH HOLDINGS LTD. DBA SPRING VALLEY
WEST and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on March 25, 2021. The Tenant applied to dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 19, 2021 (the "Notice").

The Tenant appeared at the hearing with the Advocate. T.B. and the Owner of the rental unit appeared at the hearing for the Landlord. I explained the hearing process to the parties. I told the parties they were not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. T.B. confirmed receipt of the hearing package. T.B. testified that the Landlord did not receive the Tenant's evidence; however, T.B. agreed this was a non-issue given the nature of the evidence submitted. The Tenant confirmed receipt of the Landlord's evidence.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the 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. Should the Notice be cancelled?

Background and Evidence

The parties agreed on the following. There is a written tenancy agreement in this matter. The most recent tenancy agreement started April 01, 2014 and was for a fixed term of two years. The tenancy then became a month-to-month tenancy. Rent is \$1,057.10 per month due on the first day of each month. The Tenant paid a \$425.00 security deposit in 2005 and \$450.00 pet damage deposit in 2008.

The Notice states that the Tenant failed to pay \$4,629.91 in rent due January 03, 2021.

T.B. testified that the Notice was posted to the door of the rental unit March 19, 2021.

The Tenant acknowledged receiving the Notice March 19, 2021.

The Application was filed March 25, 2021. I told the Tenant the dispute of the Notice was filed late and asked for submissions about this. The Advocate took the position that the Notice was not disputed late because it was posted to the door of the rental unit and therefore deemed received three days later.

T.B. testified that the amount of rent owing on the Notice is all rent owing from March to July of 2020. T.B. testified that the Tenant paid rent as required from September to January of 2021. T.B. confirmed that the unpaid rent noted on the Notice all relates to the Repayment Plan. T.B. testified that the Repayment Plan was provided to the Tenant November 06, 2020 and confirmed it was for installments of \$473.68 starting December of 2020. T.B. testified that the Tenant did not pay the outstanding rent within five days of receiving the Notice.

The Tenant provided reasons for rent not being paid. The Tenant acknowledged signing the Repayment Plan and receiving this November 05, 2020. The Tenant testified that they wanted to pay back the rent arrears at \$200.00 per month but the Landlord would not accept this. The Tenant acknowledged they did not pay any outstanding rent within five days of receiving the Notice.

T.B. testified that \$5,858.97 in rent is currently outstanding. T.B. could not point to documentary evidence to support this. The Tenant testified that \$5,512.01 in rent is currently outstanding. The Tenant testified that they made a payment in December of \$200.00 towards the rent arrears which is not showing in the records.

T.B. sought an Order of Possession effective two weeks after service on the Tenant.

Analysis

Section 26(1) of the *Residential Tenancy Act* (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 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.

(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.

The *COVID-19 (Residential Tenancy Act and Manufactured Home Park Tenancy Act) (No. 3) Regulation* (the “*Regulations*”) applies to rent that became due between March 18, 2020 and August 17, 2020. The relevant sections of the Regulations state:

3 (1) As an exception to sections 44 (1) (a) (ii) and 46...of the Residential Tenancy Act...a landlord must not give a tenant notice to end a tenancy under section 46 (1) of the Residential Tenancy Act in respect of affected rent that is unpaid and instead this Division applies.

(2) The landlord must give the tenant a repayment plan if

(a) the tenant has overdue affected rent, and

(b) subject to subsection (3), the landlord and tenant did not enter into a prior agreement...

6 (1) Despite section 3 (1), a landlord may end a tenancy if affected rent is unpaid in the circumstances set out in subsection (2) of this section by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives notice.

(2) For the purposes of subsection (1), the circumstances are as follows, as applicable:

(a) the tenant fails to pay an instalment on the date it is due as set out in the applicable repayment plan;

(b) the tenant fails to make a payment as set out in a prior agreement.

(3) For certainty, subsection (2) (b) of this section only applies in respect of a prior agreement that is not cancelled under section 3 (4) or (5).

(4) Sections 46 (2) to (5), 53 [incorrect effective dates automatically changed], 55 [order of possession for the landlord] and 88 [how to give or serve documents generally] of the Residential Tenancy Act apply in respect of a notice under this section.

I am satisfied there was rent outstanding when the Notice was issued because I understood the Tenant to acknowledge this.

The Tenant acknowledged receiving the Notice March 19, 2021.

It is not accurate that the Tenant is deemed to have received the Notice three days after it was posted to the door of the rental unit. The deeming provisions do not apply when a party received the document sooner as is clear from the following:

Section 90 of the *Act*:

90 A document given or served in accordance with section 88 [how to give or serve documents generally] or 89 [special rules for certain documents], **unless earlier received**, is deemed to be received as follows:

- (a) if given or served by mail, on the fifth day after it is mailed;
- (b) if given or served by fax, on the third day after it is faxed;
- (c) if given or served by attaching a copy of the document to a door or other place, on the third day after it is attached;
- (d) if given or served by leaving a copy of the document in a mailbox or mail slot, on the third day after it is left.

Policy Guideline 12 at page 12:

11. DEEMED RECEIPT

The Legislation sets out when documents that are not personally served are considered to have been received. **Unless there is evidence to the contrary**, a document is considered or 'deemed' received:

- if given or served by mail (ordinary or Registered Mail/Express Post with signature option), on the fifth day after mailing it;
- if given or served by fax, on the third day after faxing it;
- if given or served by email, on the third day after emailing it;
- if given or served by attaching a copy of the document to a door or other conspicuous place, on the third day after attaching it; and
- if given or served by leaving a copy of the document in a mailbox or mail slot, on the third day after leaving it.

Deemed receipt applies to all types of documents not personally served.

Deemed receipt provisions are **generally used in the absence of evidence of the date documents were actually received**, such as when a respondent has not filed a dispute or appeared at a dispute resolution hearing. The provisions are also used to calculate timelines for future events, such as when notice of hearing packages must be served in order to ensure the respondent has the required amount of notice of the hearing. See section 5 above for an example of using deemed receipt provisions to allow for sufficient notice of entry to a rental unit.

The deemed receipt provisions do not give parties additional time to file a response.

(emphasis added)

The above is also reflected on the Notice at page two.

Given the Tenant received the Notice March 19, 2021, the five-day time limit for paying the outstanding rent or disputing the Notice started March 19, 2021. Therefore, the Tenant had until March 24, 2021 to pay the outstanding rent or dispute the Notice.

The Tenant acknowledged they did not pay any outstanding rent by March 24, 2021.

The Tenant disputed the Notice March 25, 2021 and therefore late.

The Tenant did not apply for more time to dispute the Notice and therefore I have not considered whether the five-day time limit for disputing the Notice should be extended. I also note that section 66(1) of the *Act* only allows time limits to be extended in exceptional circumstances and the Tenant did not provide any evidence that could support exceptional circumstances in this matter.

In the circumstances, the Tenant did not dispute the Notice in time, the time limit is not extended and therefore the Tenant's dispute of the Notice is dismissed without leave to re-apply.

Section 55(1) of the *Act* states:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52...and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I have reviewed the Notice and find it complies with section 52 of the *Act*.

Given the above, and pursuant to section 55(1) of the *Act*, I issue the Landlord an Order of Possession effective two weeks after service on the Tenant.

Section 55(1.1) of the *Act* states:

(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [landlord's notice: non-payment of rent], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

The parties disagreed about the amount of rent currently outstanding. The Landlord has not provided documentary evidence to support that \$5,858.97 is currently outstanding. However, I accept that at least \$5,512.01 in rent is currently outstanding because the Tenant acknowledged this. Therefore, I issue the Landlord a Monetary Order for \$5,512.01. The Landlord advised that they have another claim filed with the RTB in relation to unpaid rent. The Landlord is at liberty to seek the remaining \$346.96 in rent they say is outstanding through that claim or through a new Application for Dispute Resolution filed with the RTB.

Conclusion

The Landlord is issued an Order of Possession effective two weeks 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 issued a Monetary Order for \$5,512.01. 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: July 14, 2021

Residential Tenancy Branch