



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding IMH POOL XIV LP C/O METCAP LIVING MANAGEMENT
INC and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, OPR, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord April 04, 2022 (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 March 08, 2022 (the "Notice")
- To recover unpaid rent
- To keep the security deposit
- To recover the filing fee

The Agent for the Landlord (the "Agent") appeared at the hearing. Nobody appeared at the hearing for the Tenant. I explained the hearing process to the Agent who did not have questions when asked. I told the Agent they are not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). The Agent provided affirmed testimony.

The Agent withdrew the request to keep the security deposit.

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.

The Agent confirmed the hearing package and evidence were sent to the Tenant at the rental unit by registered mail April 20, 2022. The Agent advised that the most current ledger was not served on the Tenant. The Landlord submitted documentary evidence of service with Tracking Number 225 on it. I looked Tracking Number 225 up on the

Canada Post website which shows the package was unclaimed after a notice card was left in relation to the package.

Based on the undisputed testimony of the Agent, documentary evidence of service and Canada Post tracking information, I am satisfied the Tenant was served with the hearing package and Landlord's evidence in accordance with sections 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the "Act"). The Tenant cannot avoid service by failing to pick up registered mail. Pursuant to section 90(a) of the Act, the Tenant is deemed to have received the hearing package and evidence April 25, 2022, three months before the hearing. I find the Tenant received the hearing package and Landlord's evidence in sufficient time to prepare for and appear at the hearing.

In relation to the most current rent ledger, I admit this evidence because of the nature of the evidence and because the Tenant did not appear at the hearing to dispute the admissibility of this evidence.

Given 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 relevant evidence provided. 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 recover the filing fee?

Background and Evidence

A written tenancy agreement was submitted. The tenancy started June 01, 2021, and was for a fixed term ending May 31, 2022. Rent is \$1,757.00 per month due on the first day of each month.

The Notice was submitted. The Notice states that the Tenant failed to pay \$1,757.00 in rent due March 01, 2022. The Notice is addressed to the Tenant and refers to the

rental unit. The Notice is signed and dated by the Agent. The Notice has an effective date of March 27, 2022.

The Agent testified that the Notice was mailed to the rental unit March 08, 2022.

The Agent testified as follows. The Tenant failed to pay March rent as stated in the Notice. The Tenant did not have authority under the *Act* to withhold March rent. The Tenant has not paid any rent since the Notice was issued. The Tenant did not dispute the Notice.

The Agent testified that \$8,837.00 in rent is currently outstanding for rent from March to July of 2022. The Agent testified that a rent increase came into effect as of June 2022. The Agent confirmed the Tenant did not have authority under the *Act* to withhold rent from March to July of 2022.

The Agent agreed to an Order of Possession effective July 31, 2022.

The Landlord submitted ledgers regarding the Tenant.

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.

(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 accept the undisputed testimony of the Agent and based on it, as well as the documentary evidence, I find the following.

I accept rent was \$1,757.00 per month due on the first day of each month pursuant to the written tenancy agreement until June of 2022, when the rent increased.

I accept the Tenant did not have authority under the *Act* to withhold March rent. I accept the Tenant was required to pay \$1,757.00 in rent by March 01, 2022, pursuant to section 26(1) of the *Act*. I also find section 46(3) of the *Act* does not apply.

I accept the Tenant failed to pay March rent by March 01, 2022, as required. 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 accept the Notice was sent to the Tenant at the rental unit by mail March 08, 2022. I find the Notice was served in accordance with section 88(c) of the *Act*. Pursuant to section 90(a) of the *Act*, the Tenant is deemed to have received the Notice March 13, 2022.

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 March 13, 2022, to pay the outstanding rent or dispute the Notice pursuant to section 46(4) of the *Act*.

I accept the Tenant has not paid any rent since the Notice was issued.

I accept the Tenant did not dispute the Notice.

Given the Tenant did not pay the outstanding rent or dispute the Notice within five days of March 13, 2022, I find pursuant to section 46(5)(a) of the *Act* that the Tenant is conclusively presumed to have accepted that the tenancy ended March 27, 2022, 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 March 27, 2022.

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 at 1:00 p.m. on July 31, 2022.

I accept the Tenant currently owes \$8,837.00 in rent. I allow the Landlord to amend the Application to seek the full amount of rent outstanding pursuant to rule 4.2 of the Rules. I accept the Tenant did not have authority under the *Act* to withhold rent. Therefore, the Landlord is entitled to recover \$8,837.00 in unpaid rent.

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

In total, the Landlord is entitled to \$8,937.00 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 at 1:00 p.m. on July 31, 2022. 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 \$8,937.00 and is issued a Monetary Order in this amount. 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 28, 2022

Residential Tenancy Branch