



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL-S, FFL (Landlord)
 CNR-MT (Tenants)

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties (the “Applications”).

The Landlord filed their application May 13, 2022 (the “Landlord’s Application”). The Landlord applied as follows:

- For an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent dated February 11, 2022 (the “Notice”)
- To recover unpaid rent
- To keep the security deposit
- To recover the filing fee

The Tenants filed their application May 20, 2022 (the “Tenants’ Application”). The Tenants applied to dispute the Notice and for more time to dispute the Notice.

S.B. and P.L. (the “Landlords”) appeared at the hearing for the Landlord. Nobody appeared at the hearing for the Tenants. I explained the hearing process to the Landlords. I told the Landlords they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Landlords provided affirmed testimony.

The written tenancy agreement submitted names the company Landlord as the landlord whereas the Landlord’s Application originally named S.B. as the landlord. S.B. advised at the hearing that the company Landlord is the landlord, and this is reflected in the style of cause.

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

The Landlords testified that the hearing package and evidence were sent to the Tenants at the rental unit by registered mail and that Tracking Numbers 371 and 442 relate to this. The Landlord submitted documentary evidence of service with Tracking Numbers 371 and 442 on it. I looked Tracking Numbers 371 and 442 up on the Canada Post website which shows the package with Tracking Number 371 was sent May 26, 2022, and delivered June 01, 2022. The website shows the package with Tracking Number 442 was sent May 26, 2022, and unclaimed after a notice card was left May 30, 2022.

Based on the undisputed testimony of the Landlords, documentary evidence of service and Canada Post tracking information, I am satisfied the Tenants were served with the hearing package and evidence for the Landlord's Application in accordance with sections 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the "Act"). Based on the Canada Post tracking information, I find the packages were sent May 26, 2022, and find the Landlord complied with rule 3.1 of the Rules in relation to the timing of service. In relation to the package with Tracking Number 371, I find this was received June 01, 2022, based on the Canada Post tracking information. In relation to the package with Tracking Number 442, the Tenants cannot avoid service by failing to pick up registered mail. The Tenants are deemed to have received the package May 31, 2022, pursuant to section 90(a) of the *Act*.

Given I was satisfied of service, I proceeded with the hearing in the absence of the Tenants. The Landlords were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Tenants entitled to more time to dispute the Notice?
2. Should the Notice be cancelled?
3. Is the Landlord entitled to an Order of Possession based on the Notice?

4. Is the Landlord entitled to recover unpaid rent?
5. Is the Landlord entitled to keep the security deposit?
6. Is the Landlord entitled to recover the filing fee?

Background and Evidence

A written tenancy agreement was submitted. The tenancy started August 01, 2021, and was for a fixed term ending July 31, 2022. Rent is \$1,680.00 per month due on the first day of each month. The Tenants paid a \$840.00 security deposit.

The Notice was submitted. The Notice states that the Tenants failed to pay \$8,400.00 due February 01, 2022. The Notice is addressed to the Tenants and refers to the rental unit. The Notice is signed and dated by P.L. The Notice has an effective date of February 21, 2022.

The Landlords testified as follows. The Tenants paid rent for the first month of the tenancy and then stopped paying rent. The Tenants have not paid any rent since September of 2021. The Notice was served on the Tenants in person February 11, 2022. The Tenants owed \$8,400.00 in rent when the Notice was issued. The Tenants have not made any rent payments since being issued the Notice. There is currently \$21,840.00 in rent outstanding. The Tenants did not have authority under the *Act* to withhold any of this rent.

The Landlords sought an Order of Possession effective two days after service on the Tenants.

The Landlord submitted a Proof of Service signed by a witness in relation to the Notice and a Monetary Order Worksheet.

Analysis

Rule 7.3 of the Rules states:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Given the Tenants did not appear at the hearing, the Tenants' Application is dismissed without leave to re-apply.

Section 7 of the *Act* states:

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

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 tenants fail 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 Landlords and based on it, as well as the documentary evidence outlined, I find the following.

The Tenants were required to pay \$1,680.00 in rent by the first day of each month pursuant to the tenancy agreement.

The Tenants have failed to pay rent from September 01, 2021, to present. The Tenants did not have authority under the *Act* to withhold any of this rent. I find the Tenants were required to pay rent each month pursuant to section 26(1) of the *Act* and that section 46(3) of the *Act* does not apply.

Given the Tenants failed to pay rent as required, the Landlord was entitled to serve them with the Notice pursuant to section 46(1) of the *Act*. The Notice was served on the Tenants in person February 11, 2022.

Upon a review of the Notice, I find it complies with section 52 of the *Act* in form and content as required by section 46(2) of the *Act*.

The Tenants had five days from receipt of the Notice on February 11, 2022, to pay the outstanding rent or dispute the Notice pursuant to section 46(4) of the *Act*.

I accept that the Tenants have not paid any rent since the Notice was issued and therefore did not pay the outstanding rent by February 16, 2022.

The Tenants did dispute the Notice; however, they disputed it May 20, 2022, three months after the deadline for doing so. The Tenants sought more time to dispute the Notice but did not appear at the hearing to provide a basis for this request. Further, pursuant to section 66(3) of the *Act*, I could not have extended the timeline past February 21, 2022, the effective date of the Notice, even if the Tenants had appeared and provided a basis for disputing the Notice late.

Given the above, I find the Tenants did not pay the outstanding rent or dispute the Notice by February 16, 2022, and therefore, pursuant to section 46(5) of the *Act*, the Tenants are conclusively presumed to have accepted that the tenancy ended February 21, 2022, and were required to vacate the rental unit by this date.

The Landlord is entitled to an Order of Possession pursuant to section 55(2)(b) of the *Act* and is issued an Order effective two days after service on the Tenants.

I have already accepted that the Tenants currently owe \$21,840.00 in rent for September of 2021 to September of 2022. I allow the Landlord to amend the Landlord's Application to request the full amount owing pursuant to rule 4.2 of the Rules. I award the Landlord the amount owing.

Given the Landlord has been successful in the Landlord's 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 \$21,940.00. The Landlord can keep the \$840.00 security deposit pursuant to section 72(2) of the *Act*. The Landlord is issued a Monetary Order for the remaining \$21,100.00 pursuant to section 67 of the *Act*.

Conclusion

The Landlord is issued an Order of Possession effective two days after service on the Tenants. This Order must be served on the Tenants and, if the Tenants do not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

The Landlord can keep the security deposit and is issued a Monetary Order for \$21,100.00 for unpaid rent. This Order must be served on the Tenants and, if the Tenants do 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: September 21, 2022

Residential Tenancy Branch