



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL OPRM-DR

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking an Order of Possession and a monetary order for unpaid rent or utilities and to recover the filing fee from the tenant for the cost of the application. The landlord's application was made by way of the Direct Request process, which was scheduled by the Residential Tenancy Branch to a participatory hearing.

The landlord was represented at the hearing by an agent who gave affirmed testimony. However, the line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony, and no one for the tenant joined the call. The landlord's agent testified that the tenant was served with the hearing package which included notice of this hearing by registered mail on October 18, 2017 and was given the opportunity to provide proof of such service after the hearing had concluded. I have now received a copy of a Registered Domestic Customer Receipt stamped with that date by Canada Post, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

Issue(s) to be Decided

- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?

Background and Evidence

The landlord's agent testified that this tenancy began as a fixed term in 2008 and reverted to a month-to-month tenancy after December 31, 2010, and the tenant still resides in the rental unit. Rent in the amount of \$2,000.00 per month is payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the

tenant in the amount of \$1,000.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a single family dwelling and a copy of the tenancy agreement has been provided as evidence for this hearing which is dated February 28, 2008.

The landlord's agent further testified that the tenant did not pay rent in August, 2017 and the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by registered mail on August 17, 2017. A copy has been provided as evidence for this hearing and it is dated August 17, 2017 and contains an effective date of vacancy of August 27, 2017 for unpaid rent in the amount of \$2,000.00 that was due on August 1, 2017. The landlord has provided a copy of a Registered Domestic Customer Receipt bearing a date stamp from Canada Post dated August 17, 2017 as proof of such service.

The landlord's agent testified that no rent has been paid since the issuance of the notice to end the tenancy, and the arrears have now accumulated to \$10,000.00 to the end of December, 2017. The tenant has not served the landlord with an application for dispute resolution disputing the notice, and the landlord seeks an Order of Possession, a monetary order in the amount of \$10,000.00 and recovery of the \$100.00 filing fee.

Analysis

The *Residential Tenancy Act* states that once served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice), the tenant has 5 days to pay the rent in full or dispute the Notice by filing and serving the landlord with an application for dispute resolution. If the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy and must move out of the rental unit by the effective date of vacancy contained in the Notice.

In this case, I am satisfied that the tenant was served with the Notice by registered mail on August 17, 2017 which is deemed to have been received by the tenant 5 days later, or on August 22, 2017. The tenant has not paid the rent and arrears have continued to accumulate. The landlord's agent testified that the landlord has not been served with an application for dispute resolution by the tenant disputing the Notice, and I have no such application before me. Therefore, I find that the tenant is conclusively presumed to have accepted the end of the tenancy and the landlord is entitled to an Order of Possession. Since the effective date of vacancy must be changed to allow for 5 days service, I find that the effective date of vacancy is August 27, 2017, which has long since past, and therefore, I grant the Order of Possession on 2 days notice to the tenant.

I also accept the undisputed testimony of the landlord's agent that the tenant is in arrears of rent the sum of \$10,000.00 and I grant a monetary order in favour of the landlord for that amount.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

I further grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$10,100.00.

This order is final and binding and may be enforced.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 28, 2017

Residential Tenancy Branch