



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

This hearing convened as a result of a Landlords' Application for Dispute Resolution wherein the Landlords sought an Order of Possession and monetary compensation based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on February 4, 2019 (the "Notice") as well as recovery of the filing fee.

The hearing was conducted by teleconference at 11:00 a.m. on April 4, 2019. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The parties confirmed their email addresses during the hearing. The parties further confirmed their understanding that this Decision would be emailed to them and that any applicable Orders would be emailed to the appropriate party.

Issues to be Decided

1. Are the Landlords entitled to an Order of Possession?

2. Are the Landlords entitled to monetary compensation for unpaid rent?
3. Should the Landlords recover the filing fee?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement which confirmed that this tenancy began September 1, 2018. Monthly rent was payable in the amount of \$1,150.00 on the 1st of the month. The agreement further provided that the Tenants paid a security deposit of \$420.00.

The Landlord testified that the Tenants failed to pay the full amount of the January rent such that \$400.00 was outstanding. The Tenants also failed to pay the February 2019 rent.

On February 4, 2019 the Landlord issued the Notice. The Notice informed the Tenants they had five days in which to pay the outstanding rent or make an application for dispute resolution.

The Tenants failed to pay the outstanding rent and failed to dispute the Notice within the five days imposed by section 46 of the *Residential Tenancy Act*.

The Landlord testified that following receipt of the Notice the Tenants paid the sum of \$1,400.00 towards the outstanding rent, however, they did not pay the full amount owing.

The Landlord testified that the Tenants also failed to pay the March 2019 and April 2019 rent such that at the time of the hearing the Tenants owed \$2,700.00 in outstanding rent.

The Tenant, K.S., testified in response to the Landlord's submissions. K.S. confirmed that monthly rent was \$1,150.00 and that \$400.00 was owing from January 2019, as well as \$1,150.00 for March and \$1,150.00 for April for a total of \$2,700.00.

K.S. confirmed receiving the Notice which was posted to the rental unit door. He further confirmed that they did not pay rent as required nor did they apply to dispute the Notice. He testified that they were hoping to pay the outstanding rent when they received their income tax return.

Analysis

Based on the testimony and evidence before me, and on a balance of probabilities, I find as follows.

A tenancy may only be ended in accordance with the *Residential Tenancy Act*. Section 46 of the *Act* allows a Landlord to end a tenancy for non-payment of rent. Section 46(2) further

provides that a notice issued under section 46 must comply with section 52, which relates to form and content; section 52 reads as follows:

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
- (e) when given by a landlord, be in the approved form.

In the case before me, the Landlord's name is missing in one section of the form; however, it is signed and dated by the Landlords as required by section 52(a). The Notice also gives the address of the rental unit, states the effective date of the notice and indicates the notice is given for non-payment of rent. I therefore find the Notice complies with section 52 and 46.

The Tenants did not dispute that they have not paid the outstanding rent and did not apply to dispute the Notice. As such, they are conclusively presumed pursuant to section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice and must vacate the rental unit. For greater clarity I reproduce that subsection as follows:

- (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.

Pursuant to section 26 of the *Act*, the Tenants must not withhold rent, even if the Landlords are in breach of the tenancy agreement or the *Act*, unless the Tenants have some authority under the *Act* to not pay rent. In this situation, although I accept that the Tenants have had some financial difficulties of late, the Tenants had no authority under the *Act* to not pay rent.

I therefore find that the Landlords are entitled to an Order of Possession effective **two (2) days** after service on the Tenants. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

I also find that the Landlords have established a total monetary claim of \$2,800.00 comprised of \$2,700.00 in unpaid rent and the \$100.00 fee paid by the Landlords for this application.

I grant the Landlord an Order under section 67 for the balance due of **\$2,800.00**. This Order may be filed in the Provincial Court (Small Claims Division) and enforced as an order of that Court.

Conclusion

The Landlords are granted an Order of Possession and are granted a Monetary Order for the unpaid rent and filing fee.

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: April 09, 2019

Residential Tenancy Branch