



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL OPUM-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 had applied by way of the Direct Request process, which was adjourned to this participatory hearing, and an Interim Decision was provided to the landlord requiring the landlord to serve the tenant with the Interim Decision and Notice of Reconvened Hearing, and all other required documentation within 3 days of receiving the Interim Decision.

The landlord attended the hearing and gave affirmed testimony, however the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenant joined the call. The landlord testified that the tenant was served with the Interim Decision and notice of this hearing, as well as all other required documentation by registered mail on March 25, 2019. The landlord has provided copies of a Registered Domestic Customer Receipt and a Canada Post cash register receipt bearing that date, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act* and the order of the director, Residential Tenancy Branch.

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 or utilities?

Background and Evidence

The landlord testified that this month-to-month tenancy began on May 1, 2015. Rent in the amount of \$575.00 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 \$287.50 which is still held in trust by the landlord, and no pet damage deposit was collected. A copy of the tenancy agreement has been provided as evidence for this hearing.

The tenant failed to pay rent for January or February, 2019 and on February 27, 2019 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which has been provided for this hearing, by posting it to the door of the rental unit. It is dated February 26, 2019 and contains an effective date of vacancy of March 9, 2019 for unpaid rent in the amount of \$1,150.00 that was due on February 5, 2019. The tenant has not served the landlord with an Application for Dispute Resolution disputing the Notice, and has not paid the rent. Arrears have continued to accumulate, and the landlord is now owed \$2,300.00 for January through April, 2019 inclusive.

The tenant has also failed to pay utilities to the City as required by the tenancy agreement, and the landlord received a letter from the City dated February 22, 2019 stating that services to the rental unit have been disconnected for arrears of \$773.37. A copy of the letter has been provided for this hearing. After receiving the letter, the landlord attended at the rental unit with written demand for payment and found out from neighbours that the tenant had vacated and has gone out of the Country. The landlord mailed the demand letter for unpaid utilities to the rental unit.

The Interim Decision of the director, Residential Tenancy Branch also states that the address indicated on the Proof of Service of the Notice of Direct Request Proceeding form is not the rental address noted in the tenancy agreement, and that neither of those addresses matches the address in the landlord's application for dispute resolution. The landlord testified that a typing error exists, and that the apartment is referred to as unit 2 and is one and the same as unit 202.

The landlord seeks an Order of Possession and a monetary order for unpaid rent of \$2,300.00 and for utilities totalling \$773.37 and recovery of the \$100.00 filing fee.

Analysis

The *Residential Tenancy Act* states that in order to be effective, the notice to end the tenancy must contain the address of the rental unit. I have reviewed the evidentiary material provided by the landlord:

- The tenancy agreement states that the address of the rental unit is unit 202.
- The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities specifies an address of unit 2.
- The Proof of Service document states that it was served to unit 2.
- The letter from the City advising the landlord of unpaid utilities refers to unit 2, and specifies the tenant's name.
- The landlord's demand letter for unpaid utilities specifies unit 2.

In the circumstances, I am satisfied that the tenant has been served in accordance with the *Act* with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and that it is common to refer to the rental unit as unit 2 even though the tenancy agreement specifies it as unit 202.

The *Act* also states that once served, or deemed served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant must pay the rent in full or dispute it within 5 days. If the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy. In this case, the landlord testified that the Notice was posted to the door of the rental unit on February 27, 2019, which is deemed to have been served 3 days later, or March 2, 2019. The tenant did not serve the landlord with an Application for Dispute Resolution disputing the Notice, and I have no such application before me. The tenant did not pay the rent and arrears have continued to accumulate. 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.

Having found that the Notice is deemed to have been served on March 2, 2019, I also find that the effective date of vacancy is changed to March 12, 2019, being 10 days after deemed service. Since the effective date of vacancy has passed, I grant the Order of Possession effective on 2 days notice to the tenant.

I also accept the undisputed testimony of the landlord that the tenant is now in arrears of rent the sum of \$2,300.00 as well as \$773.37 for unpaid utilities, and the landlord is entitled to monetary compensation in the amount of \$3,073.37.

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 effective 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 \$3,173.37.

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: April 23, 2019

Residential Tenancy Branch