



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

This participatory hearing was scheduled pursuant to an Interim Decision issued on June 6, 2019 in response to a landlord's application for an Order of possession and Monetary Order for unpaid rent under the Direct Request procedure. An Interim Decision was issued on June 6, 2019 and should be read in conjunction with this decision.

At the hearing, only the landlord's agent appeared. Since tenants did not appear at the hearing I explored service of hearing documents upon the tenants. As reflected in the Interim Decision, the landlord had provided evidence that the original proceeding package was sent to each of the tenants via registered mail on June 5, 2019. Pursuant to the Interim Decision of June 6, 2019, the landlord was then required to serve the Interim Decision and Notice of this hearing to the tenants in accordance with section 89. The landlord testified that he did so on June 10, 2019 by serving the female tenant in person and obtaining her written receipt of the documents. I ordered the landlord to provide me with a copy of the tenant's written receipt during the hearing, which he did. Upon review of the receipt, I was satisfied the female tenant received the Interim Decision, notice of today's hearing and other required documents.

Since the female tenant was in receipt of the Interim Decision and Notice of Hearing, I have issued a Monetary Order against the female tenant only as the male tenant was not served with the hearing documents. However, the Order of Possession names both tenants since section 89(2) permits a landlord to serve an adult who apparently resides with the tenant with an Application pertaining to an Order of Possession. Accordingly, I find that in serving the female tenant with the hearing documents on June 10, 2019 the male tenant has been sufficiently served with notification that the landlord is seeking an Order of Possession.

During the hearing, the landlord requested that the Application be amended to reflect loss of rent for the months up to and including the current month since the tenants continue to occupy the rental unit. The landlord also requested authorization to retain the security deposit in partial satisfaction of the unpaid and/or loss of rent. Rule 4.2 of the Rules of Procedure provides:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

In the circumstances presented to me, I find the landlord's request for amendment to be reasonably anticipated and I amended the landlord's monetary claim accordingly.

I noted that the landlord was also seeking compensation for unpaid utilities but the landlord did not provide any utility bills or copies of the written demand for utility payment. The landlord requested the claim for utilities be withdrawn, with leave to reapply. I granted the landlord's request and the landlord has leave to reapply for unpaid utilities.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord entitled to a Monetary Order for unpaid rent and/or loss of rent?
3. Is the landlord authorized to retain the tenants' security deposit?

Background and Evidence

The tenancy started on March 21, 2018 and the landlord collected a security deposit of \$925.00. The tenants are required to pay rent of \$1,850.00 on the first day of every month.

The landlord submitted that the tenants were making partial payments toward the rent and as of May 18, 2019 when the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities ("10 Day Notice") was served, the tenants owed \$2,850.00 in rent. The landlord's agent submitted that the 10 Day Notice was served in person to the female

tenant on May 18, 2019 and he obtained the tenant's written receipt of the 10 Day Notice. The 10 Day Notice has a stated effective date of May 31, 2019.

The tenants did not file to dispute the 10 Day Notice and I heard that they continue to occupy the rental unit. The landlord acknowledged that after serving the tenant with the 10 Day Notice the tenants paid \$500.00 on May 21, 2019; \$700.00 on June 21, 2019 and \$1,150.00 on July 8, 2019.

The landlord submitted that currently the landlord is owed \$4,200.00 in rent after taking into account loss of rent for June 2019 and July 2019 and the tenants' partial payments.

The landlord seeks an Order of Possession as soon as possible and a Monetary Order to recover the unpaid and loss of rent. The landlord also seeks authorization to retain the security deposit in partial satisfaction of the rent.

Analysis

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right to withhold rent.

Where a tenant does not pay rent the landlord is at liberty to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the 10 Day Notice or the tenant has five days to dispute the 10 Day Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the 10 Day Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the 10 Day Notice.

I accept the unopposed evidence before me that the tenants was required to pay rent of \$1,850.00 on the first day of every month and the tenants failed to do so and as a result the tenants owed \$2,850.00 in rent when the 10 Day Notice was served upon the tenants. Having been satisfied the 10 Day Notice was served on May 18, 2019 in person, the tenants had until May 23, 2019 to either pay all of the outstanding rent or file an Application for Dispute Resolution to dispute it. Since the tenants did neither, I find the tenants conclusively presumed to have accepted that the tenancy would end and they were required to vacate by May 31, 2019. Therefore, I find the landlord is entitled

to regain possession of the rental unit and I provide the landlord with an Order of Possession effective two (2) days after service upon the tenants.

Based upon the unopposed evidence before me, I find the landlord entitled to recover from the tenants the unpaid and loss of rent incurred as a result of the tenants failure to pay rent and/or vacate the rental unit. I find the landlord's request to recover \$4,200.00 in rent to be accurate based on the unopposed submissions before me and as reconciled in the calculation below.

I authorize the landlord to retain the tenants' security deposit in partial satisfaction of the rent owed to the landlord. I also award the landlord recovery of the \$100.00 filing fee paid for this application.

In light of the above, the landlord is provided a Monetary Order to serve and enforce upon the tenant, calculated as follows:

Unpaid rent per 10 Day Notice	\$2,850.00
Less: payment of May 21, 2019	(500.00)
Less: payment of June 21, 2019	(700.00)
Less payment of July 8, 2019	(1,150.00)
Plus: loss of rent for June 2019	1,850.00
Plus: loss of rent for July 2019	<u>1,850.00</u>
Unpaid and loss of rent to date	\$4,200.00
Plus: filing fee	100.00
Less: security deposit	<u>(925.00)</u>
Monetary Order for landlord	\$3,375.00

Conclusion

The landlord is provided an Order of Possession effective two (2) days after service upon the tenants. The landlord is authorized to retain the tenants' security deposit and is provided a monetary Order against the female tenant for the balance of \$3,375.00

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: July 19, 2019

Residential Tenancy Branch