



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

This teleconference review hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the “Act”) for an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”), for monetary compensation for unpaid rent, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The application was initially filed under the Direct Request process which was adjourned to a participatory hearing through an interim decision dated April 11, 2019. A participatory hearing was held on May 28, 2019 in which a two-day Order of Possession was granted. On June 5, 2019 the Tenant filed an Application for Review Consideration and a decision dated June 6, 2019 granted this review hearing.

Both the Tenant and Landlord were present for the teleconference hearing. The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package regarding the review hearing. The Tenant confirmed receipt of some of the Landlord’s evidence. However, the Landlord stated that he served the Tenant in person with a copy of his evidence in the presence of a witness.

The Landlord submitted a letter from a witness which states that the Landlord served the Tenant in person on April 13, 2019. Therefore, I find that the Landlord served the Tenant in accordance with Sections 88 and 89 of the *Act* and accept the Landlord’s evidence which will be considered in this decision. The Tenant did not submit any evidence prior to the hearing. Neither party brought up any issues regarding service during the hearing.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

Preliminary Matters

At the hearing the Landlord confirmed that he was no longer seeking a Monetary Order for unpaid rent as rent has since been paid. The Landlord is still seeking an Order of Possession based on the 10 Day Notice. Therefore, pursuant to Section 64(3)(c) of the *Act*, the Application for Dispute Resolution was amended to remove the Landlord's claim for unpaid rent. This decision will address the Landlord's application for an Order of Possession as well as the recovery of the filing fee.

Issues to be Decided

Should the Order of Possession granted on May 28, 2019 be confirmed, varied or set aside?

Should the decision dated May 28, 2019 be confirmed, varied or set aside?

Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The parties were in agreement as to the details of the tenancy which were confirmed by the tenancy agreement submitted into evidence. The tenancy began on September 1, 2018. Monthly rent in the amount of \$1,400.00 is due on or before the first day of each month. A security deposit of \$700.00 and a pet damage deposit of \$700.00 was paid at the start of the tenancy.

The Landlord testified that a 10 Day Notice was served to the Tenant on April 2, 2019 by posting the notice on the Tenant's door. The 10 Day Notice dated April 2, 2019 was submitted into evidence and notes that \$1,400.00 was unpaid as due on April 1, 2019. The Landlord testified that he went to the Tenant's rental unit on April 11, 2019 and asked the Tenant to pay the outstanding rent.

The Landlord stated that at first the Tenant was unsure if he had already paid but when he realized he hadn't he paid \$1,400.00 in cash. The Landlord stated that he did not

have a receipt with him but posted a receipt on the Tenant's door later in the day on April 11, 2019.

The Landlord submitted a proof of service form signed by a witness stating service of the 10 Day Notice by posting on the Tenant's door on April 2, 2019. The Landlord also submitted a copy of rent payment receipts dating from September 2018 to July 2019. The receipt from April 2019 states a payment of \$1,400.00 on April 11, 2019 and notes 'for use and occupancy only'. The Landlord confirmed that the Tenant has paid rent for May, June and July which was accepted for use and occupancy as well.

The Tenant stated that he received the 10 Day Notice in person on April 6, 2019 and did not have anything posted to his door on April 2, 2019. He stated that at the time he thought he had paid rent already, but as he had not he paid \$1,400.00 cash to the Landlord on April 6, 2019. The Tenant testified that the Landlord advised him that he had no more rent receipts so would provide one when he did which was not until April 11, 2019.

The Tenant stated that the Landlord would often provide rent receipts days after the rent was paid. He noted that the Landlord never dated the receipts the day the rent was paid, but instead dated them the day the receipt was provided to the Tenant.

The Tenant stated that the Landlord would only accept cash payments for rent which made it difficult to pay if the Landlord did not answer his door. The Landlord denied these claims.

Analysis

As stated in Section 46(4) of the *Act*, after receipt of a 10 Day Notice, a tenant has 5 days to pay the outstanding rent or to file a claim to dispute the notice. If a tenant does not do so, then Section 46(5) of the *Act* applies, and the tenant is conclusively presumed to have accepted that the tenancy ends.

The parties were not in agreement as to when the 10 Day Notice was served. However, in the absence of evidence to confirm otherwise, I accept the proof of service form submitted by the Landlord in which a witness signed that the 10 Day Notice was posted on the Tenant's door on April 2, 2019. I have no evidence before me that would establish that this is inaccurate and that the notice was served at a later date or through a different service method.

As such, in the absence of evidence that would determine when the Tenant actually received the 10 Day Notice, I refer to the deeming provisions of Section 90 of the *Act* which states that a document served by posting on the door is deemed served 3 days after posting. Therefore, I find that the Tenant was deemed to have received the 10 Day Notice on April 5, 2019.

Although the parties were not in agreement as to when the Tenant paid April 2019 rent, I accept the evidence of the rent receipts and find that, on a balance of probabilities, the Tenant paid rent on the date of the receipt; April 11, 2019. I have no evidence before me that would establish that the rent was paid before this date and I find it unlikely that the Landlord was not dating rent receipts the date the rent was paid.

As stated by rule 6.6 of the *Residential Tenancy Branch Rules of Procedure*, the onus to prove a claim, on a balance of probabilities, is on the party making the claim. When two parties to a dispute resolution proceeding provide conflicting testimony, it is up to the party with the burden of proof to submit sufficient evidence over and above their testimony to support their claim.

In this matter, based on the Landlord's evidence that supports his testimony and due to insufficient evidence from the Tenant to support his testimony, I find that the Landlord has met the burden of proof.

Therefore, as I find that the 10 Day Notice was deemed served on April 5, 2019 and the Tenant paid rent on April 11, 2019, the Tenant did not pay rent within the 5 days allowable under the *Act*.

As such, I find that the 10 Day Notice was not cancelled with the rent payment. As I have no evidence before me that the Tenant applied to dispute the 10 Day Notice, I find that the notice is valid, and the Tenant is conclusively presumed to have accepted that the tenancy ends, pursuant to Section 46(5) of the *Act*.

Accordingly, I determine that the decision and Order of Possession dated May 28, 2019 stand. The Landlord may enforce the Order of Possession and as stated in the May 28, 2019 decision may retain \$100.00 from the security deposit as recovery of the filing fee paid for the Application for Dispute Resolution.

Conclusion

The decision and Order of Possession dated May 28, 2019 stand.

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 22, 2019

Residential Tenancy Branch