



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Brown Bros Agencies Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

This participatory hearing was scheduled for 11:00 a.m. on this date, via teleconference call, pursuant to an Interim Decision issued by an Adjudicator on July 2, 2019 in response to a landlord's application for an Order of Possession and Monetary Order for unpaid rent that was made under the Direct Request procedure. The Interim Decision should be read in conjunction with this decision.

As seen in the Interim Decision of July 2, 2019 the landlord was ordered to serve the tenant with notification of this participatory hearing so as to hear further details related to the landlord's application since the tenancy agreement had not been signed by the tenant, as is required in order to succeed under the direct Request procedure.

At the participatory hearing, only the landlord was represented. Since the tenant did not appear, I explored service of the Notice of Hearing upon the tenant. The landlord's agent testified that notification was sent to the tenant at the rental unit address via registered mail on July 11, 2019. The landlord's agent testified that the tenant continues to reside in the rental unit; however, the registered mail package was returned as "unclaimed" on August 26, 2019. The landlord's agent orally provided a registered mail tracking number as proof of service and I have recorded the registered mail tracking number on the cover page of this decision.

In sending registered mail to a tenant, the address for service must be either the tenant's address of residence or forwarding address. Section 90 of the Act deems a person to have received mail five days after mailing, even if the person refuses to accept or pick up their mail.

I was satisfied by the evidence before me that the landlord used a service address that is the tenant's current address of residence. Further, pursuant to section 90 of the Act, I

found the tenant to be deemed served with notification of this proceeding and I continued to hear from the landlord's agent without the tenant present.

The landlord requested the monetary claim be amended to include loss of rent for July 2019. Since the tenant is still occupying the rental unit I found the request for amendment to be reasonably foreseeable in the circumstances and I permitted the amendment.

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 and/or loss of rent for June 2019 and July 2019?

Background and Evidence

The landlord's agent testified that the named landlord, who is a property management company, took over management of this tenancy in 2016. The tenancy had already formed between the tenant and the owner of the property. Based on the records the named landlord had been provided, the tenancy started on August 1, 2014 and the landlord collected a security deposit of \$475.00. The monthly rent was originally set at \$700.00 due on the first day of every month. Two rent increases have been given since the tenancy started and the current monthly rent obligation is \$754.00.

I noted that the security deposit of \$475.00 exceeds the permissible amount. The landlord's agent acknowledged that the overpayment had not been deducted from the rent paid or payable.

The landlord's agent testified that the tenant failed to pay rent for June 2019. On June 7, 2019 the resident manager of the residential property posted a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") on the door of the rental unit. The 10 Day Notice indicates rent of \$754.00 was outstanding as of June 1, 2019 and an effective date of June 20, 2019. I heard the tenant did not pay the outstanding rent and the tenant did not file to dispute the 10 Day Notice.

The landlord's agent testified that a cheque was received in July 2019 indicating the payment was for July 2019 rent; however, the cheque was returned with the reason the account was closed. The landlord also received a cheque from lawyers administering a

trust account for the tenant for the month of August 2019, which the landlord deposited, and it has not yet been returned.

The landlord seeks an Order of Possession and Monetary Order because June 2019 rent was not paid, nor did the landlord receive monies for July 2019, and the tenant continues to occupy the rental unit.

Documentary evidence provided for my consideration included a copy of: a written tenancy agreement signed by the owner of the property but not the tenant; two Notices of Rent Increase; the tenant's ledger; the 10 Day Notice dated June 7, 2019; and, Proof of Service for service of the 10 Day Notice signed by the resident manager.

The landlord requested the security deposit remain in trust, to be administered at a later date, in accordance with the Act.

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 tenant was required to pay rent of \$754.00 on the first day of every month and the tenant failed to do so for June 2019. I also accept that the landlord posted a 10 Day Notice on the door of the rental unit on June 7, 2019. In keeping with section 90 of the Act, the tenant is deemed to have received the 10 Day Notice three days after posting, or June 10, 2019. Accordingly, I find the tenant had until June 15, 2019 to either pay the outstanding rent or file to dispute the 10 Day Notice. Since the tenant did neither, I find the tenancy ended on the stated effective date of June 20, 2019.

I heard there was an attempt to pay rent for July 2019 and a cheque was received for August 2019 rent; however, I am satisfied the landlord has put the tenant on notice that the landlord considers this tenancy to be at an end and will be seeking an Order of Possession by serving the tenant with the landlord's Application for Dispute Resolution and notification of this proceeding. Therefore, I am satisfied the 10 Day Notice has not been waived and I grant the landlord's request for an Order of Possession and provided to the landlord with this decision is an Order of Possession effective on August 31, 2019.

With respect to the landlord's monetary claim, I find I am satisfied by the unopposed submissions of the landlord that the landlord is entitled to recover the unpaid rent for June 2019 and loss of rent for July 2019 from the tenant. However, I also find the tenant was entitled to deduct \$125.00 from rent otherwise payable to the landlord since he overpaid the security deposit, as provided under section 19 of the Act. The landlord was limited to collecting a security deposit of \$350.00 as this is $\frac{1}{2}$ of the monthly rent when the tenancy started; yet, the tenant paid the landlord \$475.00 which is an overpayment of \$125.00. Section 19 provides as follows:

- 19** (1) A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of $\frac{1}{2}$ of one month's rent payable under the tenancy agreement.
- (2) If a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment.

[My emphasis underlined]

In light of the above, I award the landlord the net amount of \$1,383.00 [calculated as \$754.00 + \$754.00 - \$125.00] plus \$100.00 for recovery of the filing fee for a Monetary Order in the total amount of \$1,483.00.

Having deducted the overpaid security deposit of \$125.00 from the landlord's award for unpaid rent, I hereby authorize and order the parties to adjust their records to reflect the landlord is now holding a security deposit of \$350.00. The landlord may hold the \$350.00 security deposit in trust, to be administered at a later date, in accordance with section 38 of the Act.

Conclusion

The landlord is provided an Order of Possession effective on August 31, 2019 to serve and enforce upon the tenant.

The landlord is provided a Monetary Order in the amount of \$1,483.00 to serve and enforce upon the tenant.

I have authorized and ordered that the security deposit held in trust is now \$350.00 and that amount shall be held in trust to be administered at a later date in accordance with section 38 of the Act.

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: August 27, 2019

Residential Tenancy Branch