



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDL, MNRL, OPC, OPR

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution filed on September 4, 2019 in which the Landlord sought the following relief:

- an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent issued on August 19, 2019 (the "10 Day Notice");
- an Order of Possession based on a 1 Month Notice to End Tenancy for Cause issued on August 20, 2019 (the "1 Month Notice");
- monetary compensation for damage to the rental unit and unpaid rent; and,
- recovery of the filing fee.

The hearing of the Landlord's Application was scheduled for teleconference at 9:30 a.m. on October 1, 2019. Only the Landlord and her witness called into the hearing. The Landlord gave affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions to me.

The Tenants did not call into this hearing, although I left the teleconference hearing connection open until 9:56 a.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord, her witness and I were the only ones who had called into this teleconference.

As the Tenants did not call in, I considered service of the Landlord's hearing package. The Landlord testified that on September 4, 2019 she served the Tenants with the Notice of Hearing and her Application by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Tenants were duly served as of September 9, 2019 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord's 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—Landlord's Claims

Residential Tenancy Branch Rule of Procedure 2.3 provides that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Hearings before the Residential Tenancy Branch are scheduled on a priority basis. Time sensitive matters such as a tenant's request for emergency repairs or the validity of a notice to end tenancy are given priority over monetary claims.

It is my determination that the priority claim before me is the validity of the 10 Day Notice and the 1 Month Notice. I find that these claims are not sufficiently related to the Landlord's monetary claims. I also note that the Tenants have the right to repair any damage to the rental unit prior to the tenancy ending; as such, the Landlord's claim for compensation for the cost to repair the wall is premature. For these reasons I exercise my discretion and dismiss the Landlords' monetary claim with leave to reapply.

Preliminary Matters—Delivery of Decision

The Landlord confirmed their email addresses during the hearing as well as their understanding that this Decision would be emailed to them.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Should the Landlord recover the filing fee?

Background and Evidence

The Landlord testified that the tenancy began August 1, 2018. Monthly rent was \$1,200.00 per month although the Tenants were to be credited the sum of \$200.00 per month for yard maintenance.

The Landlord testified that the Tenants failed to pay the August rent, following which she issued the 10 Day Notice. She further testified that she attempted to personally serve the Tenants the 10 Day Notice on August 19, 2019 but they slammed the door on her. She then posted the 10 Day Notice to the door on August 19, 2019.

The 10 Day Notice indicated that the sum of \$2,550.00 was outstanding as of August 19, 2019. The 10 Day Notice further informed the Tenants they had five days in which to pay the outstanding rent or make an application for dispute resolution, failing which they would be conclusively presumed to accept the end of the tenancy.

The Landlord confirmed that the Tenants failed to pay the outstanding rent and failed to make an application for dispute resolution within five days of service as required by section 46 of the *Residential Tenancy Act*.

For reasons which will be explained further in this my Decision, I did not require testimony from the Landlord with respect to the 1 Month Notice.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the Landlord's testimony that the 10 Day Notice was served on the Tenants on August 19, 2019 by posting to the rental unit door. Section 90 of the *Act* provides that documents served by posting to the door are deemed served three days later; as such, I find the Tenants were served the 10 Day Notice as of August 22, 2019.

I further accept the Landlord's undisputed testimony that the Tenants have not paid the outstanding rent and did not apply to dispute the Notice within five days of service of the 10 Day Notice. Pursuant to section 46(5) of the *Residential Tenancy Act*, the Tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

Under section 26 of the *Act*, the Tenants must not withhold rent, even if the Landlord is 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 I find that the Tenants had no authority under the *Act* to not pay rent.

I find that the Landlord is entitled to an Order of Possession effective **two days** after service on the Tenants. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

As I have ended the tenancy pursuant to the 10 Day Notice, I need not make any findings with respect to the 1 Month Notice.

Having been successful in her application, the Landlord is entitled to recovery of the \$100.00 filing fee. Pursuant to section 38 I authorize the Landlord to retain \$100.00 from the Tenants' security deposit.

Conclusion

The Tenants failed to pay rent and did not file to dispute the Notice to End Tenancy. The Tenants are presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is granted an Order of Possession.

The Landlords' request for a Monetary Order is dismissed with leave to reapply.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: October 3, 2019

Residential Tenancy Branch