



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, OPRM-DR

Introduction

This hearing convened as a result of a Landlord's Application for an Order of Possession and monetary compensation by way of the Direct Request proceeding pursuant to section 55(4) of the *Residential Tenancy Act*. The tenancy agreement filed in evidence did not indicate the date rent was payable and as such the Adjudicator considering the direct request application adjourned the Landlord's Application to a participatory hearing.

The participatory hearing was scheduled for teleconference before me at 9:30 a.m. on this date. Only the Landlords called into the hearing. They gave affirmed testimony and were provided the opportunity to present their 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 9:47 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 Landlords and I were the only ones who had called into this teleconference.

As the Tenants did not call in, I considered service of the Landlords' hearing package. The Landlord, P.S., testified that they served the Tenants with the Notice of Hearing and the Application on August 15, 2019 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 A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.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 August 18, 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 Landlords' 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

The Landlords 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. Are the Landlords entitled to an Order of Possession and monetary compensation based on the Notice?
2. Should the Landlords recover the filing fee?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement confirming that this tenancy began June 1, 2018. Monthly rent was payable in the amount of \$1,400.00.

The Landlord testified that the parties agreed rent was payable on the 3rd of the month. He further testified that the Tenants paid rent on the 3rd of the month each month from June 2018 to March 2019, following which they did not pay rent.

On July 12, 2019 the Landlords issued a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the "Notice"). The Notice indicated that the sum of \$4,200.00 was outstanding for rent and \$524.98 for utilities.

The Landlord testified that they served the Tenants by posting the Notice to the rental unit door on July 12, 2019. The Landlord confirmed that the Tenants failed to pay the outstanding rent and failed to make an application to dispute the Notice within the strict five-day deadline imposed by section 46 of the *Residential Tenancy Act*.

The Landlord further testified that the Tenants failed to pay rent for August, September and October such that at the time of the hearing the sum of \$9,800.00 was owing or rent.

The Landlord also stated that they have been concerned about evicting the Tenants as their children go to the same school as the Tenants' children and play together. He further stated that they are worried about the Tenants and their children but are unable to go without the rental income any further.

Analysis

Based on the testimony and evidence before me, and on a balance of probabilities, I find as follows.

The Tenants have not paid the outstanding rent and did not apply to dispute the Notice and are therefore conclusively presumed pursuant to section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

Pursuant to section 26 of the *Act*, the Tenants must not withhold rent, even if the Landlords are 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 the Tenants had no authority under the *Act* to not pay rent.

I find that the Landlords are entitled to an Order of Possession effective **two (2) days** after service on the Tenants. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

I find that the Landlords have established a total monetary claim of \$9,900.00 comprised of \$9,800.00 in unpaid rent for the months April, May, June, July, August, September and October 2019 and the \$100.00 fee paid by the Landlord for this application. I grant the Landlord an Order under section 67 for the **\$9,900.00** awarded. This Order must also be served on the Tenants and may be filed in the Provincial Court (Small Claims Division) and enforced as an order of that Court.

I grant the Landlords leave to reapply for monetary compensation for the unpaid utilities, cleaning and repair of the rental unit, any further loss of rent, and any amounts incurred to enforce the Order of Possession.

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 Landlords are granted an Order of Possession and are granted a Monetary Order in the amount of \$9,900.00 representing unpaid rent from April 2019 to October 2019 as well as recovery of the \$100.00 filing fee.

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: October 04, 2019

Residential Tenancy Branch