



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 Landlords' Application for Dispute Resolution in which they sought an Order of Possession and monetary compensation from the Tenant based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on October 1, 2019 (the "Notice") as well as recovery of the filing fee.

The hearing of the Landlord's Application was scheduled for teleconference before me at 1:30 p.m. on November 8, 2019. Only the Landlord called into the hearing. She gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 1:46 p.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, S.P., and I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlords' hearing package. The Landlord, S.P., testified that she served the Tenant with the Notice of Hearing and the Application on October 19, 2019 by registered mail, sent to both the rental unit address as well to a postal address the Tenant provided to the Landlord. A copy of the registered mail tracking number for both packages is provided on the unpublished cover page of this my Decision.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 Tenant was duly served as of October 24, 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 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 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. Are the Landlords entitled to an Order of Possession and monetary compensation based on the Notice?
2. Should the Landlord recover the filing fee?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement confirming that this tenancy began August 31, 2019. Monthly rent is \$1,200.00 and the Tenant paid a \$600.00 security deposit.

The Tenant failed to pay the October rent following which the Landlord served the Notice. The Notice indicated that the sum of \$1,200.00 was outstanding as of October 1, 2019. The Landlord confirmed that her husband, M.P., personally served the Notice on the Tenant's 21 year old daughter. The Landlord further confirmed that both pages of the Notice were served on the Tenant.

The Landlord testified that the Tenant paid the October rent on October 25, 2019.

The Landlord stated that the Tenant only paid \$600.00 on November 1, 2019 such that the sum of \$600.00 remains outstanding for November.

Analysis

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

The Landlord issued the Notice pursuant to Section 46 of the *Act* which provides as follows:

Landlord's notice: non-payment of rent

46 (1)A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2)A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(3)A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4)Within 5 days after receiving a notice under this section, the tenant may

(a)pay the overdue rent, in which case the notice has no effect, or

(b)dispute the notice by making an application for dispute resolution.

(5)If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a)is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b)must vacate the rental unit to which the notice relates by that date.

(6)If

(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

I find that the Tenant failed to pay rent as required by the tenancy agreement and section 26 of the *Residential Tenancy Act*. I accept the Landlord's testimony that her husband served the Notice on the Tenant on October 2, 2019.

I also find that the Tenant did not pay the outstanding rent and did not apply to dispute the Notice within the five days required by section 46(4) and is 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. Although the Tenant paid the October rent on October 25, 2019, this was well past the five days required by section 46.

Pursuant to section 55 of the *Act*, I find that the Landlord is entitled to an Order of Possession effective **two (2) days** after service on the Tenant. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

I accept the Landlord's evidence that the Tenant only paid \$600.00 in rent for November 2019 such that the sum of \$600.00 remains outstanding. I therefore find that the Landlord has established a total monetary claim of \$700.00 comprised of \$600.00 in rent owing for November 2019 and the \$100.00 fee paid by the Landlord for this application.

In furtherance of this my Decision, I grant the Landlord a monetary order pursuant to sections 67 and 72 of the *Act* for the balance due of **\$700.00**. This Order may be filed in the Provincial Court (Small Claims Division) and enforced as an order of that Court.

Conclusion

The Tenant failed to pay rent and did not file to dispute the Notice to End Tenancy within five days of receipt of the Notice. Consequently, the Tenant is 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 and is granted a Monetary Order for the \$600.00 owing for the November rent and recovery of the \$100.00 filing fee.

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: November 08, 2019

Residential Tenancy Branch