



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 dealt with an Application for Dispute Resolution by Direct Request that was made on August 19, 2019, and adjourned to a participatory hearing. This hearing was convened pursuant to the Landlord's Application seeking the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent;
- a monetary order for unpaid rent; and
- the return of the filing fee.

The hearing was scheduled for 11:00 A.M. on November 26, 2019 as a teleconference hearing. The Landlord appeared at the appointed date and time of the hearing and provided affirmed testimony. No one appeared for the Tenants. The conference call line remained open and was monitored for 16 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Landlord and I were the only persons who had called into this teleconference.

The Landlord testified that he served his Application and document evidence to the Tenants on September 24, 2019. Copies of the Canada Post registered mail receipts were submitted in support. Based on the oral and written submissions of the Landlord, and in accordance with sections 89 and 90 of the *Act*, I find that the Tenants are deemed to have been served with the Application, and documentary evidence on September 29, 2019, the fifth day after their registered mailings.

The Landlord was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However,

only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?
2. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
3. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. It confirmed the tenancy began on February 3, 2019. The Tenants are required to pay rent in the amount of \$1,350.00 to the Landlord which is due on the first day of each month. The Tenants paid a security deposit in the amount of \$675.00, which the Landlord currently holds.

The Landlord testified the Tenants did not pay rent when due on August 1, 2019. Accordingly, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated August 8, 2019 (the "10 Day Notice") with an effective vacancy date of August 18, 2019. At that time, rent in the amount of \$200.00 was outstanding. The Landlord testified he served the 10 Day Notice to the Tenants in person on August 8, 2019. The Landlord stated that the Tenants have been paying rent in full ever since, however, have not yet paid the outstanding balance of rent owing in the amount of \$200.00.

As noted above, the Tenants did not attend the hearing to dispute the Landlord's evidence.

Analysis

Based on the uncontested affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 26 of the Act states that a Tenants must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the Act, the regulations,

or the tenancy agreement, unless the Tenant has a right under this Act to deduct all or a portion of the rent.

Section 46 of the *Act* states 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.

The Landlord served the Tenants in person with a the 10 Day Notice dated August 8, 2019 with an effective vacancy date of August 18, 2019. Pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to be received on the same date. I find the Tenants are deemed to have received the 10 Day Notice on August 8, 2019.

Section 46(4) says that within 5 days after receiving a notice under this section, the Tenants may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution. Therefore, the Tenants had until August 13, 2019 to either pay the outstanding rent owed to the Landlord in full or make an Application for dispute resolution.

I accept the Landlord's undisputed testimony that after service of the 10 Day Notice, the Tenants have made no payments towards the \$200.00 of unpaid rent. As the Tenants did not pay all the rent owed according to the 10 Day Notice within 5 days and there is no evidence before me that the Tenants disputed the 10 Day Notice, I find the Tenants are conclusively presumed to have accepted the tenancy ended on the effective date of the 10 Day Notice.

I note that Section 55 of the Act states that in order for a Landlord to be granted an order of possession, the Landlord's notice to end tenancy must comply with Section 52 of the Act relating to form and content.

Section 52 of the Act States; In order to be effective, a notice to end a tenancy must be in writing and must;

- (a) be signed and dated by the landlord or tenant giving the notice,*
- (b) give the address of the rental unit,*
- (c) state the effective date of the notice,*
- (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,*

(d.1) for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and

*(e) **when given by a landlord, be in the approved form.***

In this case, I find that the 10 Day Notice used by the Landlord is outdated (2012/08), therefore it is not in the approved form. I find that the Landlord has not met the requirements set out in Section 52 of the Act. As such, I find that the 10 Day Notice dated August 8, 2019 is invalid and dismiss the Landlord's Application without leave to reapply.

As the Landlord was not successful in their Application, I find that they are not entitled to the recovery of the filing fee.

Conclusion

The Landlord's Application is dismissed as the 10 Day Notice is not in the approved form. The 10 Day Notice issued by the Landlord dated August 8, 2019 is cancelled. The tenancy will continue until ended in accordance with 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: November 26, 2019

Residential Tenancy Branch