



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

On November 5, 2019, the Landlords applied for a Direct Request proceeding seeking an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") pursuant to Section 46 of the *Residential Tenancy Act* (the "*Act*"), seeking a Monetary Order for unpaid rent pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*. On November 18, 2019, this Application was set down for a participatory hearing on December 17, 2019 at 11:00 AM.

Both Landlords attended the hearing; however, the Tenants did not attend the hearing. All in attendance provided a solemn affirmation.

The Landlords advised that a Notice of Hearing package was served to each Tenant by registered mail on November 20, 2019 and they confirmed that the tracking history indicated that these packages were signed for on November 21, 2019. Based on this undisputed, solemnly affirmed testimony, in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenants were served the Landlords' Notice of Hearing package on November 21, 2019.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Landlords entitled to an Order of Possession for unpaid rent?
- Are the Landlords entitled to a Monetary Order for unpaid rent?
- Are the Landlords entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlords stated that the tenancy started on September 1, 2018 and that the Tenants gave up vacant possession of the rental unit on November 15, 2019. Rent was currently established at \$1,400.00 per month, due on the first day of each month. A security deposit of \$700.00 and a pet damage deposit of 200.00 were also paid. The Landlords submitted a copy of the tenancy agreement as documentary evidence.

They advised that the Tenants did not pay October 2019 rent, so the Notice was served to the Tenants by posting it to their door on October 4, 2019. The Notice indicated that \$1,400.00 was outstanding on October 1, 2019 and that the effective end date of the tenancy was October 15, 2019.

They also stated that the Tenants had been delinquent in paying rent since January 2019 and as of September 2019 had been in arrears in the amount of \$2,000.00. They provided, as documentary evidence, a rent ledger outlining the rental arrears over the last year. They are seeking a total monetary award in the amount of **\$4,800.00** for rent arrears comprising of \$2,000.00 from January 2019 to September 2019, \$1,400.00 for October 2019 rent, and \$1,400.00 for November 2019 rent.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

I have reviewed the Landlords' 10 Day Notice to End Tenancy for Unpaid Rent to ensure that the Landlords have complied with the requirements as to the form and content of Section 52 of the *Act*. I am satisfied that the Notice meets all of the requirements of Section 52.

Section 46 of the *Act* states that rent must be paid by the Tenants when due according to the tenancy agreement, whether or not the Landlords comply with the tenancy agreement or the *Act*, unless the Tenants have a right to deduct all or a portion of the rent.

Should the Tenants not pay the rent when it is due, Section 46 of the *Act* allows the Landlords to serve a 10 Day Notice to End Tenancy for Unpaid Rent. Once this Notice is received, the Tenants would have five days to pay the rent in full or to dispute the Notice. If the Tenants do not do either, the Tenants are conclusively presumed to have

accepted that the tenancy ends on the effective date of the Notice, and the Tenants must vacate the rental unit.

The undisputed evidence before me is that the Tenants were deemed to have received the Notice on October 7, 2019. According to Section 46(4) of the *Act*, the Tenants have 5 days to pay the overdue rent or to dispute this Notice. Section 46(5) of the *Act* states that *"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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date."*

As the fifth day fell on Saturday October 12, 2019, the Tenants must have paid the rent in full by this day or disputed the Notice by Tuesday October 15, 2019 at the latest. The undisputed evidence is that the Tenants did not pay the rent or make an Application, and there is no evidence before me that permitted the Tenants to withhold the rent.

As outlined above, the undisputed evidence is that the rent was not paid in full when it was due, nor was it paid within five days of the Tenants being deemed to have received the Notice. Moreover, the Tenants did not establish that they had a valid reason for withholding the rent pursuant to the *Act*. In addition, the Tenants did not dispute the Notice. As the Landlords' Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenants have not complied with the *Act*, I uphold the Notice and find that the Landlords are entitled to an Order of Possession pursuant to Sections 46 and 55 of the *Act*. However, as the Tenants have given up vacant possession of the rental unit, I decline to award an Order of Possession as it is not necessary.

I also find that the Landlords are entitled to a monetary award for October 2019 and November 2019 rent only as the Notice did not note that the rent arrears prior to service of the Notice was being sought. The Landlords are at liberty to reapply for the rental arrears still outstanding. I grant the Landlords a monetary award in the amount of **\$2,800.00**, which is comprised of rent owed for the months of October and November 2019.

As the Landlords were successful in this Application, I find that the Landlords are entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlords to keep the security deposit and pet damage deposit in partial satisfaction of the debts.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlords a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenants to the Landlord

October 2019 rent	\$1,400.00
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November 2019 rent	\$1,400.00
Security deposit	-\$700.00
Pet damage deposit	-\$200.00
Filing fee	\$100.00
TOTAL MONETARY AWARD	\$2,000.00

Conclusion

The Landlords are provided with a Monetary Order in the amount of **\$2,000.00** in the above terms, and the Tenants must be served with **this Order** as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: December 17, 2019

Residential Tenancy Branch