



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding New Chelsea Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

This participatory hearing was scheduled for 11:00 a.m. on this date, via teleconference call, pursuant to a decision issued by an Adjudicator on December 13, 2019 in response to the landlord's application for an Order of Possession and Monetary Order for unpaid rent made under the Direct Request procedure.

The landlord's agent appeared for the hearing; however, there was no appearance on part of the tenant despite leaving the teleconference call open for approximately 30 minutes.

Since the tenant did not appear for the hearing, I explored service of hearing documents upon the tenant. The original Application for Dispute Resolution by Direct Request and supporting documents had been sent to the tenant by registered mail on December 12, 2019 and the landlord had provided a registered mail receipt to prove service. A Search of the tracking number showed the registered mail was successfully delivered on December 13, 2019.

On December 17, 2019, the Residential Tenancy Branch issued the Notice of Dispute Resolution Proceeding and the Interim Decision of the Adjudicator to the landlord for the landlord to serve upon the tenant, in a manner that complies with section 89 of the Act.

The landlord's agent testified that she placed the Notice of Dispute Resolution Proceeding and Interim Decision documents in the tenant's mail slot located in the door of the rental unit on December 19, 2019, in the presence of a witness.

Placing documents in a mail slot is an acceptable method of service for serving many different documents, under section 88 of the Act; however, it is not a permissible

method of service under section 89. Rather, section 89 requires the documents be given to the tenant, in person, or sent by registered mail. Posting to the door of the rental unit or another conspicuous place, or giving to an adult person who apparently resides with the tenant, is also acceptable where an Order of Possession is requested.

The landlord's agent stated that the mail slot in the door is the ordinary method of delivering mail to the tenant by Canada Post.

Considering the tenant has already been served with the landlord's Application for Dispute Resolution and documentary evidence by registered mail sent on December 12, 2019; the mail slot is the ordinary manner in which mail is delivered to the tenant; and, placing the documents in the tenant's mail slot was witnessed, I have deemed the tenant sufficiently served pursuant to the discretion afforded me under section 71 of the Act. Therefore, I proceed to make a decision in this matter even though the tenant failed to appear for the participatory hearing.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord entitled to a Monetary Order for unpaid and/or loss of rent and other laundry fees?

Background and Evidence

The tenancy started on March 14, 2018 on a month to month basis. The landlord collected a security deposit of \$400.00. The tenancy agreement stipulates that the rent is set at the economic rent of \$1,210.00 and that the rent paid by the is geared to income. The tenant is also required to pay \$16.00 per month for laundry services.

The landlord's agent testified that the subsidized rental contribution is calculated annually and the anniversary date for setting the new subsidy is August 1. Prior to the anniversary date tenants are required to provide certain documents so that the subsidy may be recalculated. Where a tenant fails to provide the required documents, there is no subsidy and the rent reverts to the economic rent.

When the tenancy started the tenant's monthly rent contribution was calculated as being \$332.00 plus \$16.00 for laundry. From August 2018 to July 2019 the tenant's monthly rent contribution was set at \$221.00 plus laundry. The landlord's agent submitted the

tenant did not provide the required documents to recalculate the rent subsidy starting August 1, 2019 and in the absence of such documents the tenant was obligated to pay the economic rent of \$1,210.00. The tenant did not pay any rent for August 2019.

On August 10, 2019 the landlord's agent issued a *10 Day Notice to End Tenancy for Unpaid Rent* ("10 Day Notice") to the tenant indicating rent of \$1,210.00 was outstanding as of August 1, 2019 and a stated effective date of August 26, 2019. The 10 Day Notice was posted to the door of the rental unit on August 12, 2019. The tenant did not pay the rent and did not vacate the rental unit.

The tenant has not paid any rent for the subsequent months and continues to occupy the rental unit.

In December 2019 the landlord's agent was willing to continue the tenancy if the tenant would provide the required documents for the subsidy calculation but the tenant did not provide the required documents.

The landlord seeks an Order of possession for unpaid rent. The landlord had also applied for a Monetary Order in the amount of \$6,146.00 which is the sum of unpaid rent for August 2019 through December 2019; plus, laundry of \$16.00 per month for the months of July 2019 through December 2019.

In support of the landlord's application, I was provided a copy of the tenancy agreement; the tenant's ledger; the 10 Day Notice; Proof of Service of the 10 Day Notice signed by the person who served the 10 Day Notice; the registered mail receipt of December 12, 2019; a signed Proof of Service document for service of the Notice of Dispute Resolution Proceeding on December 19, 2019; and, communication between the parties in December 2019 with respect to the tenant needing to provide income verification documents.

Analysis

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right to withhold rent.

Where a tenant does not pay rent the landlord is at liberty to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. When a tenant receives a 10 Day Notice

the tenant has five days to pay the outstanding rent to nullify the 10 Day Notice or the tenant has five days to dispute the 10 Day Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the 10 Day Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the 10 Day Notice.

I accept the unopposed evidence before me that:

- The tenant was required to pay rent of \$1,210.00 on the first day of every month unless a subsidy applies, plus \$16.00 for laundry services.
- The tenant failed to provide the documents required to determine the subsidy and the former subsidy ended in July 2019 bringing the tenant's rent obligation to \$1,210.00 starting August 1, 2019.
- The tenant did not pay any rent for the month of August 2019 onwards, or the amount for laundry services from July 2019 onwards.
- The landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent on the door of the rental unit on August 12, 2019.
- The 10 Day Notice is in the approved form and is duly signed by an agent for the landlord.
- The tenant did not pay the outstanding rent or file an Application for Dispute Resolution to dispute the 10 Day Notice.
- The tenant has not provided the income verification documents required to calculate the rental subsidy and the tenancy has not been reinstated.

Having found the tenant was duly served with a 10 Day Notice and did not pay the outstanding rent or file to dispute the 10 Day Notice, I find the tenancy ended on the effective date of August 26, 2019. I am satisfied the tenancy has not been reinstated. Therefore, I find the landlord is entitled to regain possession of the rental unit and I provide the landlord with an Order of Possession effective two (2) days after service upon the tenant.

Based upon the unopposed evidence before me, and considering the tenant has continued to obtain the benefit of occupying the rental unit, I find the landlord entitled to recover from the tenant the unpaid rent and laundry fees as required under the terms of tenancy and loss of revenue from these sources, as reflected in the ledger up to and including the month of December 2019. Considering the date of this hearing and the tenant still occupies the rental unit, I further award the landlord loss of rent and laundry for the month of January 2020.

I also award the landlord recovery of the \$100.00 filing fee paid for this application.

The landlord did not request authorization to retain the security deposit and it remains in trust for the tenant, to be administered at a later date in accordance with section 38 of the Act.

In light of the above, the landlord is provided a Monetary Order to serve and enforce upon the tenant, calculated as follows:

Unpaid/loss of rent and laundry – per ledger	\$6,146.00
Loss of rent/laundry for January 2020	1,226.00
Filing fee	<u>100.00</u>
Monetary Order	\$7,472.00

Conclusion

The landlord is provided an Order of Possession effective two (2) days after service upon the tenant. The landlord is provided a Monetary Order in the sum of \$7,472.00 for unpaid and/or loss of rent and laundry revenue up to and including the month of January 2020.

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: January 23, 2020

Residential Tenancy Branch