



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

On December 3, 2019, the Landlord 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 December 9, 2019, this Application was set down for a participatory hearing on February 4, 2019 at 11:00 AM.

The Landlord attended the hearing with L.W., and S.A. attended the hearing as well, as an agent for the Landlord. However, the Tenant did not attend the 11-minute hearing. All in attendance provided a solemn affirmation.

S.A. advised that a Notice of Hearing and evidence package was served to the Tenant by registered mail on December 13, 2019 (the registered mail tracking number is listed on the first page of this decision). The tracking history indicated that the Tenant signed for this document on December 17, 2019. Based on this undisputed, solemnly affirmed testimony, in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was served the Landlord’s Notice of Hearing and evidence package.

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

- Is the Landlord entitled to an Order of Possession for unpaid rent?
- Is the Landlord entitled to a Monetary Order for unpaid rent?
- Is the Landlord 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.

S.A. advised that the tenancy started on August 12, 2019 and that rent was currently established at \$1,400.00 per month, due on the first day of each month. A security deposit of \$700.00 was also paid. The Landlord submitted a copy of the tenancy agreement as documentary evidence.

S.A. advised that the Tenant did not pay November 2019 rent in full, so the Notice was served to the Tenant by posting it to her door on November 2, 2019. The Notice indicated that \$308.00 was outstanding on November 1, 2019 and that the effective end date of the tenancy was November 16, 2019. She stated that the Landlord did not give the Tenant any written authorization to withhold this amount.

She also stated that the Tenant has not paid any rent since receiving this Notice, and as of the date of the hearing, the Tenant has been in arrears in the amount of \$4,508.00. The Landlord is seeking a total monetary award in the amount of **\$4,508.00** for rent arrears comprising of \$308.00 for November 2019 rent, \$1,400.00 for December 2019 rent, \$1,400.00 for January 2020 rent, and \$1,400.00 for February 2020 rent. She advised that the Tenant gave up vacant possession of the rental unit on February 3, 2020.

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 Landlord's 10 Day Notice to End Tenancy for Unpaid Rent to ensure that the Landlord has 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 Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

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

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

The undisputed evidence before me is that the Tenant was deemed to have received the Notice on November 5, 2019. According to Section 46(4) of the *Act*, the Tenant has 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 Sunday November 10, 2019, and as November 11, 2019 was a holiday, the Tenant must have paid the rent in full by November 10, 2019 or disputed the Notice by November 12, 2019 at the latest. The undisputed evidence is that the Tenant did not pay the rent or make an Application, and there is no evidence before me that permitted the Tenant 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 Tenant being deemed to have received the Notice. Moreover, the Tenant did not establish that she had a valid reason for withholding the rent pursuant to the *Act*. In addition, the Tenant did not dispute the Notice. As the Landlord's Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 46 and 55 of the *Act*. However, as the Tenant gave up vacant possession of the rental unit on February 3, 2020, an Order of Possession is not required to be granted.

I also find that the Landlord is entitled to a monetary award for November and December 2019 rent, as well as January and February 2020 rent arrears. I grant the Landlord a monetary award in the amount of **\$4,508.00**, which is comprised of rent owed for the months of November 2019 through to February 2020.

As the Landlord was successful in this Application, I find that the Landlord is 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 Landlord to keep the security deposit in partial satisfaction of the debts.

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

Calculation of Monetary Award Payable by the Tenant to the Landlord

November 2019 rent	\$308.00
December 2019 rent	\$1,400.00

January 2020 rent	\$1,400.00
February 2020 rent	\$1,400.00
Security deposit	-\$700.00
Filing fee	\$100.00
TOTAL MONETARY AWARD	\$3,908.00

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$3,908.00** in the above terms, and the Tenant must be served with **this Order** as soon as possible. Should the Tenant 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: February 4, 2020

Residential Tenancy Branch