



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPUM-DR, FFL

Introduction

On December 14, 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 or Utilities (the "Notice") pursuant to Section 46 of the *Residential Tenancy Act* (the "*Act*"), seeking a Monetary Order for unpaid rent and utilities pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*. On February 10, 2020, this Application was set down for a participatory hearing on February 27, 2019 at 9:30 AM.

The Landlord attended the hearing; however, the Tenants did not attend the 27-minute hearing. All in attendance provided a solemn affirmation.

He advised that a Notice of Hearing and evidence package was served to Tenant H.G. by email on February 10, 2020 as per the Substituted Service Decision dated February 10, 2020. A confirmation of proof of service to this email address was also provided by the Landlord. Substituted Service to Tenant Z.W. was not granted so Z.W. was not served a Notice of Hearing and evidence package by the Landlord. Based on this undisputed evidence and solemnly affirmed testimony, in accordance with Section 71 of the *Act*, I am satisfied that Tenant H.G. 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 and utilities?
- Is the Landlord entitled to a Monetary Order for unpaid rent and utilities?
- 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.

He advised that the tenancy started on July 1, 2018 and that the tenancy ended when the Tenants gave up vacant possession of the rental unit on or around the end of December 2019. Rent was established at \$2,700.00 per month, due on the first day of each month. A security deposit of \$1,350.00 was also paid. The Landlord submitted a copy of the tenancy agreement as documentary evidence.

He stated that the Tenants only paid \$1,000.00 of November 2019 rent and did not pay any of December 2019 rent, so the Notice was served by hand, on December 3, 2019, to Tenant H.G.'s mother who was at the rental unit. He stated that H.G. emailed him later, confirming that she received the Notice. The Notice indicated that \$4,400.00 was outstanding on December 1, 2019 and that the effective end date of the tenancy was December 15, 2019.

In addition, the Notice indicated that \$357.35 was owed for utilities based on a written demand that was given to the Tenants on September 5, 2019. He stated that the Tenants were responsible for utilities and they never paid them. The utility bill he is claiming for is for the period from April 1, 2019 to the end of June 2019. He referenced a copy of the utility bill and written demand for the utilities to support this claim.

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 Tenants when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenants have a right to deduct all or a portion of the rent. As well, if the Landlord has provided a written demand for outstanding utilities and the Tenants have not paid this amount within 30 days of that written demand, the Landlord may also treat this amount as unpaid rent and serve the Notice.

Should the Tenants not pay the rent or utilities when due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. Once this Notice is received, the Tenants would have five days to pay the rent or utilities 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 served the Notice on December 3, 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 Sunday December 8, 2019, the Tenants must have paid the rent in full by this day at the latest or disputed the Notice by Monday December 9, 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 served 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 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 Tenants have 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 Tenants had already given up vacant possession of the rental unit, it is not necessary to grant an Order of Possession.

I also find that the Landlord is entitled to a monetary award for the balance of November 2019 rent, for December 2019 rent, as well as utilities outstanding in the amount of \$357.35. As such, I grant the Landlord a monetary award in the amount of **\$4,757.35**.

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. The Landlord advised that he did not want to apply the security deposit to the debts outstanding as there were other claims for damages that he will pursue in future.

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	\$1,700.00
December 2019 rent	\$2,700.00
Outstanding utilities	\$357.35
Filing fee	\$100.00
TOTAL MONETARY AWARD	\$4,857.35

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$4,857.35** in the above terms. As the Landlord only served Tenant H.G. with the Notice of Hearing package, the Monetary Order will only be enforceable on H.G. 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 27, 2020

Residential Tenancy Branch