



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, CNR, FF

Introduction

This was a cross-application hearing for Dispute Resolution under the *Residential Tenancy Act* (“the Act”).

On January 10, 2020, the Tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

On January 16, 2020, the Landlord applied for an order of possession for the rental unit and a monetary order for unpaid rent based on the issuance of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

The matter was set for a conference call hearing at 1:30 pm. The Landlords attended the hearing; however, the Tenant did not. The line remained open while the phone system was monitored for fifteen minutes and the Tenant did not call into the hearing during this time. Therefore, as the Tenant did not attend the hearing by 1:45 pm, I dismiss the Tenant's application without leave to reapply.

With regard to the Landlords' application, the Landlords testified that they served the Tenant with the Notice of Dispute Resolution Proceeding using registered mail sent to the Tenant on January 21, 2020. The Landlord provided the registered mail tracking information as proof of service. I find that the Tenant was served with notice of the hearing in accordance with sections 89 and 90 of the Act.

The Landlords were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

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.

Preliminary and Procedural Matters

On November 27, 2019, the Landlord filed an Application for Dispute Resolution by Direct Request. The Landlord was seeking an order of possession for the rental unit due to unpaid rent or utilities and for a monetary order to recover unpaid rent or utilities.

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act*. The *ex parte* review was completed, and a Decision was issued on December 10, 2019. The Landlord was granted an order of possession for the rental unit and a monetary order for unpaid rent in the amount of \$1,350.00.

On December 11, 2019, the Landlord and Tenant entered into an agreement allowing for late payment of rent. The agreement indicates that the parties agreed that the Tenant could make some late rent payments on a set schedule.

The Landlord testified that the Tenant did not follow through with making the rent payments, so the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

Issues to be Decided

- Is the Landlord entitled to an order of possession and monetary order due to non-payment of rent owing under the tenancy agreement?

Background and Evidence

The Landlord submitted that the tenancy began on October 1, 2019, as a one-year fixed term tenancy. Rent in the amount of \$1,250.00 is due to be paid to the Landlords by the first day of each month. The Tenant paid the Landlord a security deposit of \$625.00

10 Day Notice

The Landlord testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 6, 2020, ("the 10 Day Notice"). The 10 Day Notice indicates the Tenant has failed to pay \$2,460.00 that was due on January 1, 2020. The Landlord provided a copy of the 10 Day Notice.

The 10 Day Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice. The Tenant disputed the 10 Day Notice on January 10, 2020 but failed to attend the hearing.

The Landlord testified that the Tenant did not pay the rent owing under the tenancy agreement within five days of receiving of the 10 Day Notice. The Landlord testified that the Tenant has not paid any amount of the outstanding rent since the Notice was issued.

The Landlord is seeking a monetary order for unpaid rent as follows:

November 2019 Rent	\$1,250.00
December 2019 Rent	\$1250.00
January 2020 Rent	\$1250.00
February 2020 Rent	\$1250.00

The Landlord testified that the Tenant made two payments towards rent in December 2019. The Tenant paid the Landlord \$940.00 and \$350.00 for a total of \$1,290.00.

The Landlord is requesting an order of possession for the rental unit and a monetary order for unpaid rent in the amount of \$3,710.00.

Analysis

Section 26 of the Act states that a Tenant 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.

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I find that the Tenant failed to pay the rent owing under the tenancy agreement within five days of receiving the 10 Day Notice.

I find that the Tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the 10 Day Notice.

I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective two days after service on the Tenant. This order may be filed in the

Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

I find that the Tenant has failed to pay the rent owing under the tenancy agreement. I find that the Tenant owes \$2,460.00 for unpaid rent from November 2019 to January 2020. I also find that the Tenant did not pay rent for the month of February 2020, and the Landlord has suffered a loss of rent for this month. The Tenant is aware that he is required to pay rent each month and therefore, pursuant to section 64 of the Act, I allow the claim to be amended to include an additional month of rent in the amount of \$1,250.00.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I find that the Landlord has established a total monetary claim of \$3,810.00 comprised of \$3,710.00 in unpaid rent for the above-mentioned months and the \$100.00 fee paid by the Landlords for this hearing. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Conclusion

The Tenant failed to attend the hearing to pursue his application to dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The Tenants application is dismissed.

The Tenant failed to pay the rent owing under the tenancy agreement within five days of receiving a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and did not have a legal right to withhold payment of the rent.

The Landlords are granted an order of possession effective two (2) days after service on the Tenant.

The Landlords are granted a monetary order for unpaid rent and the cost of the filing fee in the amount of \$3,810.00.

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: March 10, 2020

Residential Tenancy Branch