



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PODOLLANS CONSTRUCTION and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OPR – DR, FFL

Introduction

This participatory hearing was ordered pursuant to an Interim Decision issued on February 3, 2020 that was issued in response to the landlord's application for an Order of Possession for unpaid rent under the Direct Request procedure.

Both parties appeared or were represented at the participatory hearing. I confirmed the landlord had served the tenant with notice of this participatory hearing. Both parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Background and Evidence

Both parties agreed that the tenancy started on September 1, 2019, the landlord collected as security deposit of \$625.00 and the tenant was required to pay rent of \$1250.00 on the first day of every month.

It was undisputed that the tenant failed to pay \$550.00 of the rent due for December 2019 and did not pay the rent for January 2020. The landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") on the door of the rental unit on January 2, 2020. The 10 Day Notice indicates rent of \$1250.00 was outstanding as of January 1, 2020, plus \$550.00 was outstanding for December 2019 rent. The 10 Day Notice has a stated effective date of January 12, 2020.

The tenant did not pay outstanding rent within five days of receiving the 10 Day Notice and did not file an Application for Dispute Resolution to dispute the 10 Day Notice.

The tenant testified that her father told her she would send the landlord a cheque in the amount of \$2500.00 during a conversation she had with her father sometime in February 2020. The tenant acknowledged that she did not follow up with her father to see if the cheque was actually sent or cashed.

The landlord's agent testified that no monies were received from or on behalf of the tenant after the 10 Day Notice was served. Aside from the unpaid rent indicated on the 10 Day Notice, the landlord has further suffered a loss of rent for February 2020 and March 2020 since the tenant continues to occupy the rental unit.

The tenant acknowledged that she assumed her father paid \$2500.00 since she did not hear anything further and that it would have satisfied the rental arrears and a portion of February 2020 rent but that she has not paid anything toward the remainder of rent due for February 2020 or any rent for March 2020.

The tenant did not call her father as a witness or otherwise produce any corroborating evidence to demonstrate payment to the landlord by her father, as she described.

The landlord did not apply for a Monetary Order for unpaid rent, but did request a Monetary Order to recover the filing fee paid for this Application for Dispute Resolution.

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 \$1250.00 on the first day of every month and the tenant has failed to pay all of the rent due for December 2019 on or before December 1, 2019 and the tenant failed to pay any of the rent due on January 1, 2020 for the month of January 2020. I was not presented any evidence to suggest the tenant had a legal right to withhold rent. Accordingly, I find the landlord was in a position to serve the tenant with a 10 Day Notice and I accept that such a 10 Day Notice was posted to the tenant's door on January 2, 2020.

Where a document is posted to a door, or other conspicuous place, it is deemed received three days later under section 90 of the Act. Accordingly, I find the tenant had until January 10, 2020 to either pay the outstanding rent or file to dispute the 10 Day Notice. Since the tenant did neither, I find the tenancy ended 10 days after the 10 Day Notice was deemed received, or January 15, 2020. 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.

It should be noted that on March 30, 2020 an Order was issued by the Minister of Public Safety and Solicitor General under the *Emergency Program Act* suspending a landlord's right to issue a Notice to End Tenancy due to the state of emergency as a result of the Covid-19 pandemic ("Minister's Order"). However, the Notice to End Tenancy before me pre-dates the Minister's Order and, as provided in the Minister's Order, the Notice to End Tenancy remains in effect and the landlord may be provided an Order of Possession based upon the Notice to End tenancy under section 55 of the Act.

Given the landlord was successful in this Application for Dispute Resolution, I award the landlord recovery of the \$100.00 filing fee paid for this Application for Dispute Resolution. As requested, I provide the landlord with a Monetary Order in the amount of \$100.00.

Since the landlord did not apply for a Monetary Order for the unpaid and/or loss of rent, the landlord remains at liberty to make another Application for Dispute Resolution to make monetary claims against the tenant.

Conclusion

The landlord is provided an Order of Possession effective two (2) days after service upon the tenant.

The landlord is awarded recovery of the filing fee and is provided a Monetary Order in the amount of \$100.00 to serve and enforce upon the tenant.

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 31, 2020

Residential Tenancy Branch