



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SKIRCOAT INVESTMENTS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OPR-DR, FFL

Introduction

On March 23, 2020, the Landlords 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") and seeking to recover the filing fee pursuant to Section 72 of the *Act*. On March 27, 2020, this Application was set down for a participatory hearing on April 16, 2020 at 11:00 AM.

The Landlord attended the hearing; however, the Tenants did not attend the 15-minute hearing. All in attendance provided a solemn affirmation.

The Landlord advised that a Notice of Hearing and evidence package was served to each Tenant by registered mail on March 29, 2020 (the registered mail tracking numbers are listed on the first page of this decision). Based on this undisputed, solemnly affirmed testimony, in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenants were deemed to have received the Landlords' Notice of Hearing and evidence packages five days after they were mailed.

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

- Are the Landlords entitled to an Order of Possession for unpaid rent?
- Are the Landlords 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.

The Landlord advised that the tenancy started on September 15, 2017 and that rent was currently established at \$2,398.50 per month, due on the first day of each month. A security deposit of \$1,100.00 was also paid. The Landlord submitted a copy of the first page of the tenancy agreement as documentary evidence.

He stated that the Tenants March 2020 rent cheque was returned due to insufficient funds, so the Notice was served to the Tenants by posting it to their door on March 12, 2020. The Notice indicated that \$2,398.50 was outstanding on March 1, 2020 and that the effective end date of the tenancy was March 22, 2020.

He also stated that the Tenants had not paid any rent since receiving this Notice, and that they had given up vacant possession of the rental unit as of April 1, 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 Landlords' 10 Day Notice to End Tenancy for Unpaid Rent to ensure that the Landlords have 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 Landlords comply with the tenancy agreement or the *Act*, unless the Tenants have a right to deduct all or a portion of the rent.

Should the Tenants not pay the rent when it is due, Section 46 of the *Act* allows the Landlords to serve a 10 Day Notice to End Tenancy for Unpaid Rent. Once this Notice is received, the Tenants would have five days to pay the rent 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 deemed to have received the Notice on March 15, 2020. 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 March 15, 2020, the Tenants must have paid the rent in full or disputed the Notice by March 20, 2020 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 deemed to have received 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 Landlords' 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 Landlords are entitled to an Order of Possession pursuant to Sections 46 and 55 of the *Act*. However, as the Tenants gave up vacant possession of the rental unit on April 1, 2020, an Order of Possession is not required to be granted.

As the Landlords were successful in this Application, I find that the Landlords are 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 Landlords to keep \$100.00 from the security deposit in satisfaction of this debt.

Conclusion

As the Tenants have given up vacant possession of the rental unit, an Order of Possession was not granted as it would have been unnecessary.

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: April 16, 2020

Residential Tenancy Branch