



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR

Introduction

This participatory hearing was convened after the issuance of a February 7, 2020 Interim Decision of an Adjudicator. The Adjudicator determined that the landlord's application could not be considered by way of the Residential Tenancy Branch's direct request proceedings, as had been originally requested by the landlord. The Adjudicator reconvened the landlord's application for the following to a participatory hearing as the adjudicator who initially considered the application was not satisfied with there being a tenancy agreement in place.

The landlord filed an Application for Dispute Resolution (the "Application") on February 7, 2020 seeking an order of possession for the rental unit, and to recover the money for unpaid rent. The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the "Act") on March 9, 2020. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The landlord provided the completed form 'Proof of Service – Notice of Direct Request Proceeding' to show that they gave notification of this dispute to the tenant on February 6, 2020. There is proof on the file to show that the landlord sent a copy of the February 7, 2020 Interim Decision via registered mail to the tenant to notify of this participatory hearing. This includes a copy of the 'Notice of Direct Request Proceeding' and supporting documents. The form indicates that the landlord sent this package by registered mail to the tenant, and a tracking number and receipt showing that postal information was attached.

I accept the landlord's undisputed testimony in regard to the service of the hearing documents and find, pursuant to section 90 of the *Act*, that the tenant is deemed to have received the hearing package on February 12, 2020.

Preliminary Matter

The landlord submitted into evidence a copy of a signed note that stated: "I [tenant] intend to vacate [dispute address] on January 1st, 2020." In the hearing, the landlord stated that the tenant "reneged verbally" on this agreement. The landlord then served the 10 Day Notice on January 31, 2020 and moved out of the unit on February 9, 2020.

The tenant moved out of the unit after the Adjudicator decision of February 7, 2020 to reconvene this matter as a participatory hearing; therefore, the request for an Order of Possession is dismissed.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Background and Evidence

I have reviewed all documentary evidence and oral testimony before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlord applied for a monetary order for the amount of \$9,900.00 that represented unpaid rent for the months of September 2019 through to January 2020.

The landlord submitted a copy of the residential tenancy agreement. The landlord signed this document on January 31, 2019. The monthly rent was \$2,200.00 payable on the first day of each month. A previous tenant – who signed the agreement on January 31, 2019 – paid the security deposit amount of \$1,100.00 and moved out on September 1, 2019. The tenancy for the rental unit commenced on January 31, 2019.

At the time of the signing, the tenant was not an occupant of the rental unit and did not sign the tenancy agreement. He is so named on the tenancy agreement, with the name added to the tenancy agreement at the beginning and end of the agreement, with dates. The current tenant moved into the unit on July 1, 2019.

In the hearing the landlord spoke to the tenancy agreement, and the tenant's knowledge of the terms and conditions therein. She stated that the tenant added his name to the tenancy agreement when he was moving in. The landlord also stated that the tenant initialled the condition inspection report. Moreover, "the agreement was in front of him and he had seen it" shortly before July 1, 2019 when he moved in. The landlord presented that the agreement with the tenant was to have them pay \$1,100.00 for the month of September 2019, then \$2,200 per month moving forward.

The landlord submitted a copy of the 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice"), dated January 31, 2020, for \$9,900 in unpaid rent. This 10 Day Notice states that the tenant had five days from the date of service to pay the rent in full or apply for dispute resolution, or the tenancy would end on the vacancy date indicated on the 10 Day Notice, February 9, 2020. A copy of the Proof of Service of the 10 Day Notice has the indication that the landlord personally served the tenant on January 31, 2020. A witness provided their name and signature as evidence that they observed the landlord leaving a copy with the tenant on that date.

A copy of the Direct Request worksheet shows the rent amount owing. This is for the months of September 2019 through to January 2020. The monthly amount of rent is \$2,200.00, and the month of September shows \$1,100.00. This total amount listed is \$9,900.00.

Regarding the sequence of months in which the tenant did not pay rent, the landlord stated in the hearing that she was often travelling. This left the tenant "promising to pay mid-month" which for the months in question did not happen. The landlord was travelling at the time of rent payment as provided for in the tenancy agreement, in January 2020.

Analysis

I have reviewed all documentary evidence and in accordance with section 88 of the *act*, I find the tenant was served with the 10 Day Notice on January 31, 2020.

I accept the landlord's evidence that the tenant failed to pay the rent owed in full by February 5, 2020, within the five days granted under 46(4) of the *Act* and did not dispute the 10 Day Notice within the five-day period.

Based on the foregoing, 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, February 9, 2020. In the hearing the landlord stated that the tenant moved out on that date.

The 10 Day Notice contains the landlord's notation at the beginning of the document, to state "because Sept \$1100 / Oct \$2200 / Nov \$2200 / Dec \$2200 / Jan \$2200". This is where the tenant "failed to pay rent" for a total of \$9,900.00. This is the same calculation that is provided in evidence on the Direct Request worksheet.

Regarding the monetary amount, I find the tenant was a party to the tenancy agreement. I accept that the tenant had the agreement in front of him at the time he moved into the unit in July 1, 2019. I find a verbal agreement was in place, with the agreement from the tenant to pay rent from September 2019 forward. Based on the testimony of the landlord, and the proof of an agreement between the parties, I find the rent agreement was in place and clearly stated the rent amount and schedule for payments.

The evidence of the landlord on this claim is not disputed; however, the tenant had proper notice of this participatory hearing and did not attend.

I find that the tenant is obligated to pay \$9,900.00, as per the tenancy agreement.

Conclusion

Pursuant to sections 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$9,900.00 for rent owed for September 2019 through to January 2020.

The landlord is provided with this Order 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 *Act*.

Dated: April 6, 2020

Residential Tenancy Branch