



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPU, FFL, OPC**

Introduction

This hearing was scheduled to deal with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- An order of possession for unpaid utilities pursuant to sections 46 and 55;
- Authorization to recover the filing fee for this application from the tenant pursuant to section 72; and
- An Order of Possession for Cause pursuant to sections 47 and 55.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:40 a.m. to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified she served the tenant with the Notice of Dispute Resolution Proceedings package by registered mail on February 6, 2020. The package was sent to the tenant's residential address, and the tracking number for the mailing is listed on the cover page of this decision. The landlord testified that the tenant did not pick up the package and that it was sent back to her, as sender. I am satisfied the tenant is deemed served with the Notice of Dispute Resolution Proceedings package five days after it was sent by registered mail, on February 11, 2020 in accordance with sections 89 and 90 of the *Act*.

Issue(s) to be Decided

Should the Notices to End Tenancy be upheld or cancelled?

Should the landlord's filing fee be recovered?

Background and Evidence

The landlord gave the following undisputed testimony. The rental unit is one of the bedrooms in a rental accommodation shared with another tenant. The month to month tenancy began on May 12, 2019, with rent set at \$650.00 per month commencing June

1, 2019. A security deposit of \$325.00 was collected at the commencement of the tenancy which the landlord continues to hold.

On November 1, 2019, the tenant failed to pay \$650.00 in rent and \$68.00 in utilities. The landlord served the tenant with two 10 Day Notices to End Tenancy for Unpaid Rent or Utilities on November 15, 2019 by posting them to the door of the tenant's rental unit. The landlord testified that the service of the Notices was witnessed by the other occupant sharing the rental unit with the tenant, however the proof of service document provided by the landlord does not bear this witness's signature. That person was also not called to provide testimony.

The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated and signed November 6, 2019 indicates the tenant failed to pay \$650.00 in rent and \$29.00 + \$39.00 in utilities. It provides an effective date of November 6, 2019. The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated and signed November 8, 2019 indicates the same information, but provides an effective date of November 8, 2019.

Together with the two 10 Day Notices to End Tenancy for Unpaid Rent or Utilities, the landlord also served the tenant with a One Month Notice To End Tenancy for Cause dated November 15th.

The landlord testified that the tenant has not paid any rent since being served with the Notices. The landlord has not been served with any Application for Dispute Resolution to dispute the Notices by the tenant.

Analysis

Based on the undisputed testimony of the landlord, I am satisfied the tenant was deemed served with the 10 Day Notices to End Tenancy for Unpaid Rent or Utilities dated November 6 and November 8 respectively on November 18, 2019, three days after they were posted to the tenant's door on November 15, 2019 in accordance with sections 88 and 90 of the *Act*.

Section 46 of the *Act* states:

- (4) Within 5 days after receiving a notice under this section, the tenant may
 - (a) pay the overdue rent, in which case the notice has no effect, or
 - (b) dispute the notice by making an application for dispute resolution.
- (5) 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
 - a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
 - b) must vacate the rental unit to which the notice relates by that date.

The tenant failed to pay the rent identified as owing in the 10 Day Notice in full within five days of receiving that Notice. The tenant has not made an application pursuant to

section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice. In accordance with section 53 of the *Act*, the effective date of the Notices are corrected to November 28, 2019, 10 days after they were deemed served upon the tenant on November 18th. As the effective date has passed, the landlord is entitled to an Order of Possession effective 2 days after service upon the tenant.

As the tenancy will end in accordance with 46(5) of the *Act*, the merits of the landlord's One Month Notice To End Tenancy for Cause is no longer relevant and I dismiss the landlord's application for an order of possession based on this Notice.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord is at liberty to retain \$100.00 of the tenant's security deposit in full satisfaction of the filing fee.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on 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: April 14, 2020

Residential Tenancy Branch