



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, FFL

Introduction

This hearing was scheduled to convene at 9:30 a.m. this date by way of conference call concerning an application made by the landlord seeking an Order of Possession for unpaid rent or utilities and to recover the filing fee from the tenants for the cost of the application.

The landlord was represented at the hearing by an agent who gave affirmed testimony and was accompanied by another agent of the landlord who observed only and did not take part in the hearing. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenants joined the call.

The landlord's agent testified that the tenants were individually served with the landlord's Application for Dispute Resolution and notice of this hearing by registered mail on July 22, 2020 and was given the opportunity to upload proof of such service after the hearing had concluded. I have now received a Canada Post cash register receipt bearing that date and 2 tracking numbers, as well as 2 Registered Domestic Customer Receipts addressed to the tenants, and I am satisfied that the tenants have been served in accordance with the *Residential Tenancy Act*.

All evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on January 1, 2015 and the tenants still reside in the rental unit. Rent in the amount of \$950.00 per month is payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$475.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a single-family dwelling, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord has also provided a document entitled "Tenant Arrears Details" which sets out the year and month of arrears accumulating and the amounts. It shows that no rent was paid for November, 2018 and none paid for February, April or May, 2020 and including NSF fees, the total arrears had accumulated to \$3,050.00 to May, 2020. The landlord's agent testified that the arrears have now accumulated to \$3,900.00.

The landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by registered mail on July 7, 2020. A copy has been provided for this hearing and it is dated July 7, 2020 and contains an effective date of vacancy of July 22, 2020, for unpaid rent in the amount of \$1,050.00 that was due on February 1, 2020.

The landlord's agent further testified that the landlord got an e-transfer from the tenants in the amount set out in the Notice, but the landlord received a message saying that something was wrong with the tenants' side and it wouldn't transfer. Another agent of the landlord spoke to one of the tenants who advised that he had gone to the bank and someone there completed the e-transfer for him, and he doesn't know why it wasn't working.

The landlord's agent spoke to someone at the Residential Tenancy Branch and was advised that a landlord is allowed to issue a notice to end the tenancy for outstanding rent prior to the COVID-19 Pandemic rules, and that is why only \$1,050.00 was on the Notice instead of the full amount owing at that time.

The landlord had also prepared a Direct Request Worksheet which shows that arrears were \$100.00 due on November 1, 2019 and \$950.00 which was due on February 1, 2019. The landlord's agent testified that errors exist on that form which should read November 1, 2018, not November 1, 2019 and February 1, 2020, not February 1, 2019.

The tenants have not served the landlord with an Application for Dispute Resolution disputing the Notice, and the landlord seeks an Order of Possession.

Analysis

I have reviewed the Tenant Arrears Details document, and I agree that it shows an amount of \$1,050.00 of rent that was due on February 1, 2020, and I accept the undisputed testimony of the landlord's agent that the arrears that had accumulated at that time was prior to the Pandemic.

I have also reviewed the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice), and I find that it is in the approved form and contains information required by the *Residential Tenancy Act*.

I also accept the testimony of the landlord's agent that the tenants have not served the landlord with an Application for Dispute Resolution disputing the Notice, and I have no such application before me.

The *Residential Tenancy Act* specifies that if a tenant fails to dispute such a Notice within 5 days of service, the tenant is conclusively presumed to have accepted the end of the tenancy. The landlord has provided evidence that the tenants were served with the Notice by registered mail on July 7, 2020, which is deemed to have been served 5 days later, or July 12, 2020. The tenants therefore had until July 17, 2020 to dispute the Notice. That time has now passed, and I find that the tenants are conclusively presumed to have accepted the end of the tenancy and the landlord is entitled to an Order of Possession . Since the effective date of vacancy contained in the Notice has also passed, I grant the Order of Possession effective on 2 days notice to the tenants.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee, and I order the landlord to retain that amount from the \$475.00 security deposit held in trust as full recovery.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenants.

I further order the landlord to keep \$100.00 of the \$475.00 security deposit as recovery of the filing fee for this application.

This order is final and binding and may be enforced.

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: August 25, 2020

Residential Tenancy Branch