



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Select Real Estate Property Management
Division and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application is seeking orders as follows:

1. For an order of possession based on unpaid rent;
2. For a monetary order for unpaid rent;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice), issued on September 2, 2020;
2. To recover the cost of filing the application.

Only the landlord's agent appeared.

Landlord's application

The landlord's agent attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord's agent testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on September 18, 2020, a Canada post tracking number was provided as evidence of service, the tenant did not appear.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenant has been duly served in accordance with the Act.

I am further satisfied that the tenant is fully aware of today's hearing as they have their own file scheduled to be heard at this time.

In this matter, the landlord's agent has requested to amend their application to include unpaid rent that was incurred prior to the state of emergency, during the state of emergency and subsequent unpaid rent since filing their application. In this case, I find that reasonable as rent is the most basic term of all tenancy. Further, the tenant was served with a rent repayment plan, which the tenant has ignored.

Tenant's application

This matter was set for hearing by telephone conference call at 9:30 A.M on this date. The line remained open while the phone system was monitored for thirty minutes and the only participant who called into the hearing during this time was the landlord. Therefore, as the Applicant did not attend the hearing by 10:00 A.M, **I dismiss the claim without leave to reapply.**

Issues to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy began on January 1, 2019. Rent in the amount of \$995.00 was payable on the first of each month. A security deposit of \$497.50 was paid by the tenant.

The landlord's agent testified that the tenant was served with the Notice on September 2, 2020, by posting to the door. The tenant in their application acknowledged that it was

received on this date. The agent stated that the tenant did not pay the rent for September 2020. The landlord seeks an order of possession.

The landlord's agent testified that they have tried to work with the tenant, as the tenant is a really nice person; however, the tenant is now just avoiding them. The agent stated they offered the tenant a repayment plan as set out in the regulation; however, the tenant did not pay the required payment, nor the subsequent rent. The agent stated that the following is the record of rent, rent payments and the total arrears owing.

	Rent due	Payments	Rent arrears
December 2019			\$5.00
January 2020	\$995.00	0	\$1,000.00
February 2020	\$995.00	2 = \$1,120.00	\$875.00
March 2020	\$995.00	2 = \$570.00	\$1,300.00
April 2020	\$995.00	0	\$2,295.00
May 2020	\$995.00	2 = \$1,125.00	\$2,165.00
June to October 2020	\$995.00 x 5 \$4,975.00	0	\$7,140.00

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

Rules about payment and non-payment of rent

26 (1) *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations, or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

...

How to end a tenancy is defined in Part 4 of the Act.

Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2) A notice under this section must comply with section 52 [form and content of notice to end tenancy].

...

(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.

Upon review of the Notice, I find the Notice is completed in accordance with the requirements of section 52 of the Act.

I accept the undisputed testimony of the landlord's agent that the tenant failed to pay rent for September 2020, as rent was not paid within the statutory time limit. I find the Notice is valid and remains in full force and effect.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

I accept the undisputed testimony of the landlord's agent that the tenant has accumulated rent areas as shown above. As the tenancy is ending and the tenant has not complied with the repayment plan. Those amounts are due and owing. I find the tenant has failed to pay rent in accordance with the Act, I find the landlord is entitled to recover unpaid rent as noted above in the total amount of **\$7,140.00**.

I find the landlord has established a total monetary order in the amount \$7,240.00, comprise of the above amount and the \$100.00 cost of filing their application.

I order that the landlord retain the security deposit of **\$497.50** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$6,742.50**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The tenant's application is dismissed. The landlord is granted an order of possession. The landlord is granted a monetary order and is authorized to keep the security deposit in partial satisfaction of this award.

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: October 29, 2020

Residential Tenancy Branch