



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR
OPRM-DR, OPR-DR-PP, FFL

Introduction

This hearing convened as a result of cross applications. In the Tenant's Application for Dispute Resolution, filed on September 7, 2020, the Tenant sought to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on September 2, 2020 (the "Notice"). In the Landlords' Application for Dispute Resolution, filed on September 11, 2020, they sought an Order of Possession and monetary compensation based on the Notice as well as recovery of the filing fee.

The hearing of the parties' cross applications was scheduled for teleconference before me at 11:00 a.m. on October 27, 2020. Only the Landlord, D.B., called into the hearing. She gave affirmed testimony and was provided the opportunity to present the Landlords' evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 11:15 a.m. Additionally, 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.

As the Tenant did not call in, I considered service of the Landlords' hearing package. The Landlord testified that she served the Tenant with the Notice of Hearing and the Landlords' Application on September 18, 2020 by sliding the package under the rental unit door.

Pursuant to section 90 of the *Residential Tenancy Act*, documents served this way are deemed served three days later; accordingly, I find the Tenant was duly served as of September 21, 2020 and I proceeded with the hearing in their absence.

As discussed during the hearing, service by posting to the rental unit door is effective service of an Application for an Order of Possession, but is insufficient for a Monetary Order pursuant to section 89 of the *Residential Tenancy Act*, for greater clarity, I reproduce this section as follows:

Special rules for certain documents

89 (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

(2) An application by a landlord under section 55 [*order of possession for the landlord*], 56 [*application for order ending tenancy early*] or 56.1 [*order of possession: tenancy frustrated*] must be given to the tenant in one of the following ways:

- (a) by leaving a copy with the tenant;
- (b) by sending a copy by registered mail to the address at which the tenant resides;
- (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;
- (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

(3) A notice under section 94.21 *[notice of administrative penalty]* must be given in a manner referred to in subsection (1).

As the Landlord served the Tenant with the Notice of Dispute Resolution Hearing by sliding the application package under the rental unit door, this service is only effective for the Landlords' request for an Order of Possession pursuant to section 89(2) and not for their request for a Monetary Order. **I therefore dismiss, with leave to reapply, the Landlords' request for a Monetary Order.**

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the Landlord and relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Landlords entitled to an Order of Possession?
2. Should the Landlords recover the filing fee?

Background and Evidence

This tenancy began January 1, 2020. Monthly rent is \$1,200.00 and the Tenant paid a security deposit of \$600.00 and a pet damage deposit in the amount of \$300.00.

The Tenant failed to pay her rent in August and September 2020. As a Landlord was prohibited from issuing a notice to end tenancy for unpaid rent before August 17, 2020, the Landlord issued the Notice in September of 2020.

The Landlord testified that she served the Notice on the Tenant on September 2, 2020.

The Landlord confirmed that the Tenant did not pay the outstanding rent although she did apply to dispute the notice on September 7, 2020.

The Landlord testified that the Tenant also failed to pay her October 2020 rent such that at the time of the hearing the sum of \$3,600.00 was outstanding for rent.

Analysis

Rules 7.1 and 7.3 of the *Residential Tenancy Branch Rules of Procedure* provide as follows:

Commencement of Hearing:

The hearing must commence at the scheduled time unless otherwise decided by the arbitrator.

Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

As the Tenant did not attend the hearing, and the Landlord appeared and was ready to proceed, I dismiss the Tenant's claim without leave to reapply. This includes dismissing her request that I cancel the Notice. As such, the tenancy shall end in accordance with the Notice.

Section 55 of the *Residential Tenancy Act* provides in part as follows:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I have reviewed the Notice and confirm it complies with section 52 of the *Act*. Consequently, and as I have dismissed the Tenant's claim, the Landlord is entitled to an Order of Possession effective two days after service.

I also find as a fact that the Tenant failed to pay rent for August, September and October 2020. The Landlords are at liberty to reapply for Dispute Resolution seeking a Monetary Order for these sums, as well as any further losses they incur with respect to this tenancy.

The Landlords have been successful in their Application; as such and pursuant to section 72 of the *Act* I authorize the Landlords to retain **\$100.00** from the Tenants' security deposit as recovery of this sum.

Conclusion

The Tenant failed to call into the hearing and her request to cancel the Notice is dismissed.

The Landlords' request for an Order of Possession is granted.

The Landlords' request for monetary compensation from the Tenant is dismissed with leave to reapply.

As the Landlord have been successful, the Landlords are entitled to recover the \$100.00 filing fee.

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 27, 2020

Residential Tenancy Branch