



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, OPR, MNRL, OPN

Introduction

This hearing was scheduled to convene at 11:00 a.m. this date by way of conference call concerning an application made by the landlord seeking an Order of Possession and a monetary order for unpaid rent or utilities; an Order of Possession due to written notice to end the tenancy given by the tenant; and to recover the filing fee from the tenant for the cost of the application.

The landlord attended the hearing, gave affirmed testimony and provided evidence in advance of 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 tenant joined the call. The landlord testified that the tenant was served with the Application for Dispute Resolution and notice of this hearing (the Hearing Package) by registered mail on September 25, 2020 and has provided a Canada Post cash register receipt bearing that date and a tracking number, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

The landlord also testified that the surname of the tenant was written twice in the Application for Dispute Resolution in error, and I have amended the application accordingly. The frontal page of this Decision reflects that amendment.

The landlord also called 1 witness who gave affirmed testimony, and all testimony and evidence of the landlord and the witness is considered in this Decision.

Issues to be Decided

- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was given in accordance with the *Residential Tenancy Act*?
- Has the landlord established that the tenancy should end due to written notice to end the tenancy given by the tenant?

- Has the landlord established a monetary claim as against the tenant for unpaid rent?

Background and Evidence

The landlord testified that the tenant's father had originally rented the rental unit commencing about 2 years ago, and the tenant took over the tenancy when his father moved out in October, 2019 to a different unit within the building. The rental unit is an apartment in a complex that has about 20 apartments. The landlord owns the entire building but does not reside on the property.

Rent in the amount of \$1,200.00 per month is payable on the 1st day of each month. The landlord did not collect a security deposit or a pet damage deposit from the tenant, and there is no written tenancy agreement; the tenant's father worked for the landlord to cover a portion of the rent.

A government Ministry pays \$375.00 per month toward the tenant's rent, however the tenant has not paid the balance of \$825.00 ever, and is now in arrears over \$6,000.00, and \$3,225.00 was overdue as of August 1, 2020. The landlord did not know how to deal with the unpaid rent during the COVID-19 period.

On September 1, 2020 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) by posting it to the door of the rental unit, and a copy has been provided for this hearing. It is dated July 9, 2020 and contains an effective date of vacancy of July 15, 2020 for unpaid rent in the amount of \$3,200.00 that was due on September 1, 2020. The landlord is not certain how she arrived at that amount, however the landlord has only received \$375.00 per month from the Ministry, and no further rent has been paid by the tenant.

The tenant has not served the landlord with an Application for Dispute Resolution, and won't speak to the landlord; all communication is posted to the door of the rental unit.

The landlord's witness is the landlord's daughter who testified that she resides in the community and assists her mother with tenancies in the building.

The witness also testified that the tenant took over the tenancy from his father in October last year. Rent is \$1,200.00 per month, and \$375.00 is paid by the Ministry each month.

On September 1, 2020 the witness attended with the landlord at the rental unit and knocked on the door but there was no response from the tenant. The landlord taped the Notice to the door of the rental unit.

The tenant has not served the landlord with an Application for Dispute Resolution disputing the Notice.

Analysis

Firstly, for the benefit of the landlord and the landlord's witness, where a person is affirmed to tell the truth, the person may not ask another person how to testify. In this case, the landlord was assisted by her daughter, and I found it necessary to affirm the landlord's daughter. Both the landlord and the landlord's daughter looked to each other to answer questions. However, I am satisfied that both the landlord and the witness gave testimony that was the truth, the whole truth and nothing but the truth.

The *Residential Tenancy Act* specifies that once served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant has 5 days to pay the rent in full or dispute the Notice by filing and serving the landlord with an Application for Dispute Resolution. If the tenant fails to do either, the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit 10 days after service of the Notice.

In this case, the effective date of vacancy contained in the Notice is July 15, 2020, however the landlord did not serve it until September 1, 2020 by posting it to the door of the rental unit, which is deemed to have been served 3 days later, or September 4, 2020. The tenant then had 5 days, or until September 9, 2020 to dispute it or pay the rent in full, or must vacate 10 days after service, which is September 19, 2020.

I am satisfied that the tenant has failed to pay the rent and I accept the undisputed testimony of the landlord and the landlord's witness that the tenant has not served the landlord with an Application for Dispute Resolution, and I have no such application before me. Therefore, I find that the tenant is 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 has passed, I grant the Order of Possession effective on 2 days notice to the tenant. The landlord must serve the tenant with the Order of Possession. If served by posting it to the door of the rental unit, the Order of Possession will be deemed to have been served 3 days after posting it.

With respect to the monetary claim, the Notice indicates that the tenant failed to pay rent in the amount of \$3,200.00 that was due on September 1, 2020. The landlord and the landlord's witness testified that the Ministry pays \$375.00 and the tenant has failed to pay any further amount of rent. I accept the undisputed evidence of the landlord that the tenant is in arrears of rent the sum of \$3,200.00, plus \$825.00 for each of the months of October and November, 2020, for a total of \$4,850.00.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee, and I grant a monetary order in favour of the landlord in the amount of \$4,950.00.

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 tenant.

I further grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$4,950.00.

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: November 20, 2020

Residential Tenancy Branch