



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, OPR-DR, FFL

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 and to recover the filing fee from the tenants for the cost of the application. The landlord's application was made by way of the Direct Request process, which was adjourned to this participatory hearing, and an Interim Decision was provided to the landlord by the Residential Tenancy Branch.

The landlord was represented at the hearing by an agent who gave affirmed testimony and provided evidentiary material 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 tenants joined the call.

The landlord testified that the tenants were individually served with the Application for Dispute Resolution, Interim Decision, notice of this hearing and evidentiary material (the Hearing Package) by personally handing the documents to the tenants on October 30, 2020 and October 31, 2020. The landlord has provided 2 Proof of Service documents specifying that testimony, both of which contain signatures of the tenants. I am satisfied that both tenants have been served in accordance with the *Residential Tenancy Act*.

All evidence of the landlord has been reviewed and 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 a monetary claim for unpaid rent?

Background and Evidence

The landlord testified that this fixed-term tenancy began on June 20, 2020 and expires on June 30, 2021 thereafter reverting to a month-to-month tenancy. Rent in the amount of \$1,800.00 is payable on the 1st day of each month, however the tenancy agreement, a copy of which has been provided for this hearing does not specify the date that rent is due. The landlord allowed the tenants to occupy the rental unit early without charging any money for rent for June, 2020.

At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$900.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is described as a studio suite above a garage.

The tenants failed to pay rent when it was due in September, 2020 and the landlord served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) on September 11, 2020 by posting it to the door of the rental unit. A copy has been provided for this hearing and it is dated September 11, 2020 and contains an effective date of vacancy of September 24, 2020 for unpaid rent in the amount of \$1,800.00 that was due on September 1, 2020.

The landlord has not received any rent since, and has not been served with an Application for Dispute Resolution by the tenants disputing the Notice.

The landlord seeks an Order of Possession and a monetary order for unpaid rent. The landlord knows the tenants do not have the money to pay all of the arrears for September, October, November and December, 2020, and the landlord requests a monetary order in the amount of \$1,800.00.

Analysis

Where a landlord serves a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant has 5 days to dispute the Notice or pay the rent in full. If the tenant pays rent in full within that 5 day period, the Notice is of no effect. However, if the tenant does not pay the rent or dispute the Notice, the tenant is conclusively presumed to have accepted the end of the tenancy.

In this case, I am satisfied that the tenants were served with the Notice on September 11, 2020 by posting it to the door of the rental unit, which is deemed to have been served 3 days later, or September 14, 2020. The tenants have not paid the rent and the landlord testified that he has not been served with an Application for Dispute Resolution by the tenants disputing the Notice, and I have no such application before me.

Therefore, 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 has passed, I grant the Order of Possession effective on 2 days notice to the tenants.

The landlord has requested a monetary order for 1 month's rent only in the amount of \$1,800.00, giving the tenants a break with respect to the other 3 months of October, November and December, 2020, and I am satisfied that the landlord has established the claim.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee.

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 grant a monetary order in favour of the landlord as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,900.00.

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: December 15, 2020

Residential Tenancy Branch