



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") for an order of possession for non-payment of rent pursuant to section 55.

This hearing was reconvened from an *ex parte* direct request proceeding by an interim decision issued October 27, 2020.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:19 am in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 am. The landlord's agent ("**ZL**") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. 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 ZL and I were the only ones who had called into this teleconference.

ZL testified he served that the tenant with the notice of reconvened hearing, interim decision, and supporting evidence via registered mail on October 30, 2020. He provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. I find that the tenant was deemed served with this package on November 4, 2020, five days after ZL mailed it, in accordance with sections 88, 89, and 90 of the Act.

Issues to be Decided

Is the landlord entitled to an order of possession?

Background and Evidence

While I have considered the documentary evidence and the testimony of ZL, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord, the tenant, and two other individuals not named on this application (the "**former tenants**") entered into a written, fixed-term tenancy agreement starting March

1, 2018 and ending on September 1, 2018. This tenancy agreement was a renewal of an earlier tenancy agreement made in June 2017. Monthly rent is \$2080 and is payable on the first of each month. The tenant and the former tenants paid the landlord a security deposit of \$1,000 in June 2017, which the landlord continues to hold in trust.

On May 1, 2019, the former tenants entered into a mutual agreement to end tenancy with the landlord effective June 1, 2019. The tenant did not sign this mutual agreement. ZL testified that the former tenants vacated the rental unit on June 1, 2019, but that the tenant remained.

ZL testified that the tenant and the landlord agreed that the tenant could remain in the rental unit on the same terms as the tenancy agreement which started March 1, 2018. The landlord permitted the tenant to take in additional roommates to assist in paying the rent.

Z L testified that, right from the start of this new arrangement, the tenant failed to pay the full amount of monthly rent that was owed. He testified that between from June 2019 to September 2020, the tenant paid a little more than half of the rent that was owed. He testified that during this period of time \$33,280 was owed in rent, that the tenant paid \$19,195 in monthly rent, and that the tenant is arrears of \$14,165. ZL testified that in August and September of 2020 the tenant paid half of the rent owing (that is, \$1,040 each month). He testified that the tenant's monthly rental payments for the preceding months hovered around half of the rent owed.

ZL testified that since June 2019 there have been several police incidents at the rental unit, including a police raid where the police discovered a firearm. He did not provide any documentary evidence supporting these assertions. He stated that he made repeated demands via text and email for the tenant to pay the rent that was owed he never attended the rental unit to make the demands in person as he did not feel safe doing so. He testified that he understood the tenant was having "difficult times" and that he did not want to push the tenant.

However, in September 2020, he testified that he received a \$500 ticket from the city issued because the front yard of the rental unit was messy. The tenant had left furniture and appliances in the yard. ZL testified that this ticket, and the prospect of more tickets to come, led him to the conclusion that the tenancy must be ended.

On September 17, 2020 the landlord served the tenant a 10 Day Notice to End Tenancy for Non-Payment of Rent (the "**Notice**") via registered mail. He provided a Canada Post tracking number confirming this service. The Notice specified an effective date of October 3, 2020 and indicated that the tenant was \$14,165 in arrears.

The tenant neither disputed the Notice nor paid the full amount of arrears owing within five days of receiving the Notice or at all.

Analysis

Based on the testimony of ZL, I am satisfied that the landlord and the tenant entered into a new, oral tenancy agreement starting June 1, 2018 on the same terms as written tenancy agreement between the landlord, tenant, and former tenants starting March 1, 2018.

Sections 46(4) and (5) of the Act states:

Landlord's notice: non-payment of rent

46(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.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit to which the notice relates by that date.

The Notice is deemed served on September 22, 2020 (five days after it was mailed). The tenant therefore must either pay the arrears or dispute the Notice by September 27, 2020. The tenant did neither of these.

I find that the notice complies with the form and content requirements of section 52. As such, I find that the tenancy is conclusively presumed to have ended on the effective date of the Notice, October 3, 2020.

Accordingly, I issue the landlord an order of possession effective two days after the landlord serves it on the tenant at 1:00 pm.

Conclusion

Pursuant to section 55 of the Act, I order that the tenant and all other occupants deliver vacant possession of the rental unit to the landlord within two days of being served with a copy of this decision and attached order(s) by the landlord.

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: January 14, 2021

Residential Tenancy Branch