



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, OPRM-DR, FFL

Introduction

This hearing dealt with the adjourned Direct Request Application by the Landlord filed under the Residential Tenancy Act (the “*Act*”) for an order of possession to enforce a 10-Day Notice for Unpaid Rent and Utilities (the Notice) issued on September 21, 2020, for a monetary order for unpaid rent, and to recover the filing fee paid for this application. The matter was set for a conference call.

An agent for the Landlord and the Landlord (the “Landlord”) attended the hearing and were each affirmed to be truthful in their testimony. As the Tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered. Section 59 of the *Act* states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that they served the Application for Dispute Resolution to the Tenant in person on October 30, 2020. I find that the Tenant has been duly served with the original Direct Request Application in accordance with the *Act*.

The Landlord has also filed an application for an amendment to their Direct Request Application, submitted to the Residential Tenancy Branch on December 29, 2020. Section 4.6 of the Residential Tenancy Branch Rules of Procedure state that the Applicant for amendment must serve the respondent with their application to amend not less than 14 days before the hearing. The Landlord testified that they served the amendment application to the Tenant by personal service on January 4, 2021, ten days before the date of these proceedings. Consequently, I find that the Tenant has not been duly served with the Landlord’s amendment application in accordance with the *Act*, and I will not consider the issued contained in the amendment application in this decision.

The Landlord was provided with the opportunity to present their evidence orally and in documentary form and make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to an order of possession pursuant to section 46 of the Act?
- Is the Landlord entitled to a monetary order for unpaid rent?
- Is the Landlord entitled to the return of their filing fee?

Background and Evidence

The tenancy agreement shows that this tenancy began January 1, 2020, as a one-year fixed term tenancy, that rolled into a month to month after the first year. Rent in the amount of \$2,300.00, and that the Landlord is holding a \$1,150.00 security deposit for this tenancy. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

The Landlord testified that they personally served the Tenant with the Notice to End Tenancy on September 21, 2020, listing an effective date of October 4, 2020. The Notice informed the Tenant of the right to dispute the Notice or pay the outstanding rent within five days after receiving it. The Notice also informed the Tenants that if an application to dispute the Notice or payment of the outstanding rent in full is not made within five days, the Tenants are presumed to have accepted the Notice and must move out of the rental unit on the date set out on page one of the Notice.

The Landlord testified that the Tenant moved out of the rental unit on January 13, 2021, stating that they have possession of the rental unit and that they no longer required an order of possession but that they did still require a monetary order for the outstanding rent.

The Landlord testified that as of the date of this hearing, the Tenant had not paid their rent for September 2020, in the amount of \$1,725.00, for October 2020, in the amount of \$2,300.00, for November 2020, in the amount of \$2,300.00 for December 2020, in the

amount of \$2,300.00 and for January 2021, in the amount of \$2,300.00. The Landlord testified that they are requesting a Monetary Ordre for the outstanding rent for this tenancy.

Analysis

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

I accept the testimony of the Landlord that they personally served the Tenant with the Notice to end on September 21, 2020. Section 46 of the *Act* requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent a tenant must, within five days, either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do either of these things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice under section 46(5).

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].*

(3) *A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.*

(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.

I accept the testimony of the Landlord that the Tenant moved out of the rental unit on January 13, 2021. I find that this tenancy had ended as of January 13, 2021, the date the Tenant moved out of the rental unit.

As this tenancy has already ended in accordance with the *Act* and that there is no requirement for an Order of Possession. Therefore, I dismiss the Landlord's application for an Order of Possession of the rental unit.

I accept the testimony of the Landlord that the Tenant has not paid the outstanding rent for September 2020, October 2020, November 2020, December 2020 and January 2021, for this tenancy. I find that the Landlord has proven their entitlement to a monetary award for the unpaid rent for this tenancy, in the amount of \$10,925.00 in outstanding rent. I grant permission to the Landlord to retain the security deposit they are holding for this tenancy in partial satisfaction of this award.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for their application.

I grant the Landlord a monetary order in the amount of \$9,875.00; consisting of \$10,925.00 in unpaid rent, \$100.00 for the recovery of the filing fee, less the security deposit of \$1,150.00 that the Landlord is holding for this tenancy.

Conclusion

I grant the Landlord a **Monetary Order** in the amount of **\$9,875.00**. The Landlord is provided with this Order in the above terms, and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 18, 2021

Residential Tenancy Branch