



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NEST PROPERTY MANAGEMENT AND REAL ESTATE SERVICES LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR, OPRM-DR, FFL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (“*Act*”), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 23 minutes. The landlord’s agent (“landlord”) attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord confirmed that he was the owner, director, and property manager for the landlord company named in this application and that he had permission to speak on its behalf. The landlord stated that the name of the landlord company changed recently and provided a certificate of name change for same. The landlord confirmed that he had permission to represent the landlord owners of the rental unit.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord’s application to correct the legal name of the landlord company. The landlord consented to this amendment during the hearing.

At the outset of the hearing, the landlord confirmed that a monetary order for unpaid rent was not required because the tenant paid her rent. Accordingly, this portion of the landlord’s application is dismissed without leave to reapply.

Direct Request Proceeding and Service

This hearing was originally scheduled as a direct request proceeding, which is a non-participatory hearing. A decision is made on the basis of the landlord's paper application only, not any participation by the tenant. An "interim decision," dated November 19, 2020, was issued by an Adjudicator for the direct request proceeding. The interim decision adjourned the direct request proceeding to this participatory hearing.

By way of the interim decision, the landlord was required to serve the interim decision and notice of reconvened hearing to the tenant. The landlord stated that the tenant was served with the above documents on November 20, 2020, by way of registered mail to the rental unit where the tenant is residing. The landlord provided a Canada Post tracking number verbally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the interim decision and notice of reconvened hearing on November 25, 2020, five days after its registered mailing.

The landlord claimed that the tenant was served with the landlord's original application for dispute resolution by direct request on October 30, 2020, by way of registered mail to the rental unit where the tenant is residing. The landlord provided a Canada Post tracking number verbally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's original application on November 4, 2020, five days after its registered mailing.

The landlord testified that he served the tenant with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated October 6, 2020 ("10 Day Notice"), by way of posting to the tenant's rental unit door on October 9, 2020. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 10 Day Notice on October 12, 2020, three days after its posting.

Issues to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

The landlord testified regarding the following facts. This tenancy began on May 1, 2017 with the former landlords. Monthly rent in the amount of \$850.00 is payable on the first day of each month. A security deposit of \$425.00 was paid by the tenant and the landlord continues to retain this deposit, which was received from the former landlords. A written tenancy agreement was signed by the tenant and the former landlords and a copy was provided for this hearing. The current landlord owners did not sign a new tenancy agreement but continued the tenant's former tenancy when they purchased the rental unit at the end of the year 2018. The tenant continues to reside in the rental unit.

The landlord issued the 10 Day Notice, which has an effective move-out date of October 21, 2020, indicating that rent in the amount of \$40.00 was due on October 1, 2020. The landlord provided a copy of the notice. The landlord said that the unpaid rent was \$15.00, and the late fee was \$25.00, for a total of \$40.00, outstanding from September 2020. He claimed that he made an error because he only recently found out that late fees could not be included in the unpaid rent amount on the 10 Day Notice. He said that he did not tell the tenant about this error or issue a new 10 Day Notice to correct it. He explained that the \$25.00 late fees were not included in the tenancy agreement but were stated in a letter that was given to the tenant, although a copy was not provided for this hearing.

The landlord seeks an order of possession based on the 10 Day Notice. The landlord claimed that the tenant paid the full rent amount of \$850.00 for October 2020 rent on October 7, 2020. He maintained that the tenant paid the remaining outstanding balance on October 27, 2020, and on November 12, 2020, the tenant caught up with all outstanding amounts. He explained that the tenant paid full rent from December 2020 to February 2021, but she paid late during different months.

Analysis

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which is the first day of each month. Section 46 of the *Act* states that the landlord may only issue a 10 Day Notice for unpaid rent.

In this case, the landlord claimed that rent of \$40.00 was due on October 1, 2020. However, the unpaid rent was only \$15.00, while the late fee was \$25.00. Late fees are not unpaid rent. Further, the landlord did not even provide a document to indicate the late fees of \$25.00, as it is not included in the tenancy agreement. The landlord did not

correct the rent amount in the 10 Day Notice, issue a new 10 Day notice, or inform the tenant about the correct amount of rent due.

Therefore, I find that the tenant did not have notice of the correct amount of rent due. The landlord provided the incorrect amount of rent of \$40.00 due on October 1, 2020. I find that the tenant paid the full amount of October 2020 rent of \$850.00 on October 7, 2020, prior to the 10 Day Notice being served to her. The tenant did not have an opportunity to pay the outstanding \$15.00 in rent from September 2020, in order to cancel the 10 Day Notice, because the rent information supplied by the landlord was incorrect.

Accordingly, I find that the landlord is not entitled to an order of possession based on the 10 Day Notice and I dismiss this portion of the landlord's application without leave to reapply. The landlord's 10 Day Notice, dated October 6, 2020, is cancelled and of no force or effect.

As the landlord was unsuccessful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee.

Conclusion

The landlord's entire application is dismissed without leave to reapply.

The landlord's 10 Day Notice, dated October 6, 2020, is cancelled and of no force or effect.

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: February 08, 2021

Residential Tenancy Branch