



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR-PP, OPRM-DR, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The landlord, A.M. (the landlord) attended the hearing via conference call and provided undisputed affirmed testimony. The landlord, D.L. did not attend and was not represented. The tenant did not attend or submit any documentary evidence.

The landlord stated that the tenant was served with the notice of hearing package via Canada Post Registered Mail on December 17, 2020 and has submitted a copy of the Canada Post Receipt and Tracking label as confirmation.

The landlord stated that the tenant was served with the submitted 11 documentary evidence package via Canada Post Registered Mail on January 17, 2021 and has submitted a copy of the Canada Post Receipt and Tracking label as confirmation.

I accept the undisputed affirmed evidence of the landlord and find that the tenant was sufficiently served as per sections 88 and 89 of the Act. Despite not attending the hearing the tenant is deemed sufficiently served as per section 90 of the Act.

Issue(s) to be Decided

Are the landlords entitled to an order for possession for unpaid rent?

Are the landlords entitled to a monetary order for unpaid rent and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on May 15, 2020 on a fixed term tenancy ending on May 31, 2021 and then thereafter on another month-to-month basis or fixed term as per the submitted copy of the signed tenancy agreement dated May 11, 2020. The monthly rent is \$2,300.00 payable on the 1st day of each month. A security deposit of \$1,150.00 was paid on May 11, 2020.

The landlords stated that the tenant was served with a 10 Day Notice for Unpaid Rent (the 10 Day Notice) dated November 5, 2020 by placing it in the tenant's mailbox on November 5, 2020. The 10 Day Notice sets out that the tenant failed to pay rent of \$2,300.00 that was due on November 1, 2020 and that the effective end of tenancy date is November 18, 2020. The landlords have submitted a completed proof of service document dated November 5, 2020 which states that the 10 Day Notice was served by placing it in the mailbox on November 5, 2020 with a witness.

The landlords seek an order of possession and a monetary order for unpaid rent of \$2,400.00 which consists of \$2,300.00 in unpaid rent for November 2020 and recovery of the \$100.00 filing fee.

The landlord clarified that a partial payment of \$2,000.00 was paid via bank transfer on December 8, 2020 and a subsequent payment of \$1,500.00 via e-transfer on December 15, 2020. The landlord stated that the tenant was given written notice in a letter dated December 17, 2020 that these payments were being accepted "for use and occupancy only and does not cancel the 10 Day Notice to End Tenancy." The landlord stated that this notice was served to the tenant as part of the notice of hearing package via Canada Post Registered Mail on December 17, 2020.

The landlord stated that the rental payments were applied to December 2020 rent.

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

In this case it is clear based upon the landlord's undisputed evidence that the tenant was served with the 10 Day Notice dated November 5, 2020 by placing it in the tenant's mailbox on November 5, 2020. I find that the tenant was deemed served with this notice on November 8, 2020 and the effective end of tenancy date of November 18, 2020 is valid. However, the landlord stated that partial rent payments were made on December 8, 2020 of \$2,000.00 and December 15, 2020 of \$1,500.00 for which a letter dated December 17, 2020 was issued that the payments are being accepted "for use and occupancy only". The landlord served this notice to the tenant as part of the hearing package on December 17, 2020. I find that this is not clear notice of accepting partial rent payments after the effective end of tenancy date of the 10 Day Notice. As such, I find that the landlord has re-instated the tenancy and the 10 Day Notice is set aside and cancelled.

As for the landlords' monetary claim, I find that as the 10 Day Notice is not valid and the landlord has applied partial rent payments to December 2020; the November 2020 rent is outstanding; and the landlord has failed to provide a detailed breakdown of rental arrears that it is unclear as to what the total of unpaid rent is. On this basis, without sufficient details, the landlord's monetary claim is dismissed with leave to reapply.

Conclusion

The landlord's application for an order of possession is dismissed.

The landlord's application for a monetary claim is dismissed with leave to reapply.

Leave to reapply is not an extension of any applicable limitation period.

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