



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

On November 3, 2020, the Landlord made an Application for Dispute Resolution seeking an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for unpaid rent based on the Notice pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Landlord attended the hearing; however, neither Tenant attended at any point during the 26-minute teleconference. All parties in attendance provided a solemn affirmation.

The Landlord advised that the third person she named as a Respondent on the Application was not a Tenant on the tenancy agreement. As such, this person was removed as a Respondent from the Style of Cause on the first page of this Decision. She testified that a Notice of Hearing and evidence package was served to each Tenant on December 4, 2020 by registered mail (the registered mail tracking numbers are noted on the first page of this Decision). Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenants were sufficiently served the Landlord’s Notice of Hearing and evidence packages. In addition, I have accepted the Landlord’s evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for compensation?

- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord advised that the tenancy started on June 15, 2020, that rent was established at an amount of \$1,650.00 per month, and that it was due on the fifteenth day of each month. She stated that the Tenants gave up vacant possession of the rental unit in the second week of December 2020. A security deposit of \$825.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

She advised that the Notice was served to the Tenants by hand on October 4, 2020 and a signed proof of service form was submitted to confirm this. The Notice indicated that \$1,650.00 was owing for rent and it was due on September 15, 2020. The effective end date of the tenancy was noted as October 14, 2020.

She stated that the Tenants did not pay September rent, nor have they paid any rent since service of the Notice. As such, the Landlord is seeking an Order of Possession and a Monetary Order in the amount as follows:

- September 2020 rent: \$1,650.00
- October 2020 rent: \$1,650.00
- November 2020 rent: \$1,650.00

Total rental arrears: **\$4,950.00**

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 26 of the *Act* states that rent must be paid by the Tenants when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenants have a right to deduct all or a portion of the rent.

Should the Tenants not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. Once this Notice is received, the Tenants would have five days to pay the rent in full or to

dispute the Notice. If the Tenants do not do either, the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenants must vacate the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

The undisputed evidence before me is that the Notice was served to the Tenants by hand on October 4, 2020. According to Section 46(4) of the *Act*, the Tenants have 5 days to pay the overdue rent or to dispute this Notice. Section 46(5) of the *Act* states that *"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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date."*

As such, the Tenants must have paid the rent in full or disputed the Notice by October 9, 2020 at the latest. However, the undisputed evidence is that the Tenants had not paid any rent, that they did not have a valid reason or authority under the *Act* for withholding it, and that they did not dispute the Notice. Based on the consistent, undisputed evidence before me, I am satisfied that the Tenants did not have a valid reason, or any authority under the *Act*, for withholding the rent. As the Tenants did not pay the rent in full and as they had no authority to withhold the rent, I am satisfied that the Tenants breached the *Act* and jeopardized their tenancy.

As the Landlord's Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenants have not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 46 and 55 of the *Act*. Given that the Tenants have already given up vacant possession of the rental unit, awarding an Order of Possession is unnecessary.

However, I grant the Landlord a monetary award in the amount of **\$4,950.00** for the outstanding rental arrears.

As the Landlord was successful in this Application, I find that the Landlord is entitled to recover the filing fee. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain the security deposit in partial satisfaction of this debt outstanding.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenants to the Landlord

Item	Amount
Rental arrears for September 2020	\$1,650.00
Rental arrears for October 2020	\$1,650.00
Rental arrears for November 2020	\$1,650.00
Filing Fee	\$100.00
Security deposit	-\$825.00
Total Monetary Award	\$4,225.00

Conclusion

Based on the above, the Landlord is provided with a Monetary Order in the amount of **\$4,225.00** in the above terms, and the Tenants must be served with **this Order** as soon as possible. Should the Tenants 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: February 11, 2021

Residential Tenancy Branch