



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BRAMBLEBUSH FARM
and [tenant name suppressed to protect privacy]

DECISION

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the “Act”), for an order of possession, for a monetary order for unpaid rent, for damages to the rental unit and to recover the cost of the filing fee.

The landlord attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord testified the Application for Dispute Resolution and Notice of Hearing were served on the tenant, in person, on January 14, 2021. The witness SW testified that they were present when the landlord served the tenant, in person, on January 21, 2021.

I find the tenant has been duly served on January 14, 2021, in accordance with section 89 of the Act.

At the outset of the hearing the landlord stated that the One Month Notice to End Tenancy was not given in the proper form and they are withdrawing their request for an order of possession on this basis. The landlord stated they are proceeding with their request for an order of possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, issued on December 10, 2020 and their request for a monetary order for unpaid rent.

The landlord requested that their claim for unpaid rent be amended to include subsequent unpaid rent since filing their application. As rent is the most basic term of all tenancy agreement, I find it is reasonable to include subsequent unpaid rent, pursuant to section 62 of the Act.

The landlord has also included a monetary claim for damages to the rental unit, as the tenancy has not ended, I find that portion of their claim is premature. I dismiss this portion of the landlord's claim with leave to reapply.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to relevant facts and issues in this decision.

Issues to be Decided

Is the landlord entitled to an order of possession based on unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The tenancy began on May 1, 2020.. Rent in the amount of \$1,600.00 was payable on the first of each month. A security deposit of \$800.00 was paid by the tenant.

The landlord testified that the tenant did not pay rent for December 2020, and the tenant was served in person, on December 10, 2020, with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice"), issued on December 10, 2020. The landlord stated that the tenant told them at the time that they did not have money to pay the rent.

The landlord testified that the tenant did not pay rent for December 2020, and has failed to pay rent for January, February, March, and April 2021. The landlord seeks a monetary order in the amount of \$8,000.00 and an order of possession.

SW witness for landlord testified that they were present when the landlord served the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on December 10, 2020.

Analysis

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

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

Rules about payment and non-payment of rent

26 (1) *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

...

How to end a tenancy is defined in Part 4 of the Act.

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].*

...

(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.

Upon review of the Notice, I find the Notice is completed in accordance with the requirements of section 52 of the Act.

I accept the undisputed testimony of the landlord and the landlord's witness that the tenant was served with the Notice, in person, on December 10, 2020. The tenant did not pay the outstanding rent, nor did the tenant make an application for dispute resolution. I find the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, , which was December 20,

2020. I find the tenancy legally ended on December 20, 2020, and the tenant is overholding the premise on an occupancy basis.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

I accept the undisputed testimony of the landlord that the tenant has failed to pay rent for December 2020, January, February, March, and April 2021. I find the tenant has breached section 26 of the Act, and this has caused losses to the landlord. Therefore, I find the landlord is entitled to recover unpaid rent in the amount of **\$8,000.00**.

I find the landlord has established a total monetary claim of **\$8,100.00** comprised of the above amount and the \$100.00 cost of the filing fee. This order may be filed in the Provincial Court and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

I have not offset the security deposit with the monetary order; however, if this remains unpaid at the end of the tenancy, I authorize the landlord to keep it pursuant to section 38(3) of the Act to offset this amount.

Conclusion

The landlord is granted an order of possession and a monetary order for unpaid rent.

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: April 06, 2021

Residential Tenancy Branch