



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WINGLEE HOLDINGS LTD
and [tenant name suppressed to protect privacy]

DECISION

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

Introduction

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

- an order of possession for unpaid rent based on a repayment plan, 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 19 minutes. The individual landlord TG ("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 stated that she was the property manager for the landlord company named in this application, and that she had permission to speak on its behalf (collectively "landlords"). She confirmed that the landlord company was the owner of the rental unit.

Preliminary Issue - Previous Hearing and Service of Documents

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 landlords' paper application only, not any participation by the tenant. An "interim decision," dated February 3, 2021, was issued by an Adjudicator for the direct request proceeding. The interim decision adjourned the direct request proceeding to this participatory hearing. In the interim decision, the Adjudicator stated at page 2:

I find that since the 10 Day Notice was issued, the tenant has made payments totaling \$2,590.00. However, I find the landlords have not submitted a copy of any receipts indicating the landlords accepted these payments “for use and occupancy only”.

In the absence of this indication on receipts, I find it is not clear whether the tenant was aware of the landlords’ intention not to reinstate the tenancy upon receiving payments.

I find that that this question can only be addressed through a participatory hearing.

By way of the interim decision, the landlords were 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 February 4, 2021, by way of registered mail to the rental unit where the tenant is residing. The landlords provided a Canada Post receipt and the landlord confirmed the tracking number verbally during this 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 February 9, 2021, five days after its registered mailing.

Preliminary Issue - Service of Landlords’ Original Application and 10 Day Notice

The landlord claimed that the tenant was served with the landlords’ original application for dispute resolution by direct request on January 13, 2021, by way of registered mail to the rental unit where the tenant is residing. The landlord confirmed the Canada Post tracking number verbally during this hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlords’ original application on January 18, 2021, five days after its registered mailing.

The landlord stated that the tenant was served with the landlords’ 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated November 10, 2020 (“10 Day Notice”) by way of posting to the tenant’s rental unit door, where the tenant is residing. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlords’ 10 Day Notice on November 13, 2020, three days after its posting.

At the outset of the hearing, the landlord confirmed that the tenant paid all outstanding rent and the landlords were no longer seeking a monetary order for unpaid rent against the tenant. This portion of the landlords' application is dismissed without leave to reapply.

Issues to be Decided

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

Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to the landlords' documentary evidence and the testimony of the landlord, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the landlords' claims and my findings are set out below.

The landlord testified regarding the following facts. This tenancy began on February 1, 2015. Monthly rent in the current amount of \$825.00 is payable on the first day of each month. A security deposit of \$375.00 and a pet damage deposit of \$375.00 were paid by the tenant and the landlords continue to retain both deposits. A written tenancy agreement was signed by both parties. The tenant continues to reside in the rental unit,

The landlords seek an order of possession based on the 10 Day Notice and to recover the \$100.00 application filing fee.

The landlord stated the following facts. A 10 Day Notice was issued to the tenant for failure to pay rent of \$1,930.00, due on November 10, 2020. On August 1, 2020, rent of \$825.00 was due and the tenant's outstanding balance was \$495.00 from July 2020. On September 1, 2020, rent of \$825.00 was due and the tenant's outstanding balance was \$1,320.00. The tenant paid \$1,160.00 for rent on September 29, 2020, bringing her outstanding balance to \$220.00. On October 1, 2020, rent of \$825.00 was due, so the tenant's outstanding balance was \$1,045.00. On November 1, 2020, rent of \$825.00 was due, so the tenant's outstanding balance was \$1,930.00.

The landlord testified regarding the following facts. On November 13, 2020, the tenant paid \$1,900.00, bringing her balance to \$1,030.00. On December 1, 2020, rent of \$825.00 was due, bringing the tenant's balance to \$1,855.00. On January 1, 2021, rent

of \$825.00 was due, so the tenant's balance was \$2,680.00. On January 7, 2021, the tenant paid \$1,690.00, bringing her balance to \$990.00. On January 21, 2021, the tenant paid \$1,000.00, bringing her balance to a credit of \$10.00. On February 1, 2021, rent of \$825.00 was due, bringing the tenant's balance to \$815.00. On February 8, 2021, the tenant paid \$800.00, leaving a balance of \$15.00. On March 1, 2021, rent of \$825.00 was due, leaving a balance of \$840.00, and the tenant paid \$850.00 on March 1, 2021, leaving a credit of \$10.00. On April 1, 2021, rent of \$825.00 was due, leaving a balance of \$815.00, of which the tenant paid \$820.00 on April 1, 2021, so the tenant now has a current rent credit of \$5.00.

Analysis

On a balance of probabilities and for the reasons stated below, I make the following findings based on the testimony and evidence of the landlords.

Unpaid rent between March and August 2020 during the covid-19 pandemic period is subject to Residential Tenancy Policy Guideline 52, which requires the landlords to serve the tenant with a written repayment plan first. The landlords did not provide a copy of a repayment plan as evidence for this hearing. The landlord stated that a repayment plan was not given to the tenant for August 2020 unpaid rent. The landlords included unpaid rent for August 2020 on the 10 Day Notice total of \$1,930.00 and applied for an order of possession based on this notice. Therefore, I find that the landlords cannot pursue an order of possession based on this rent without a repayment plan.

Residential Tenancy Policy Guideline 11 discusses waiver, in part (my emphasis added):

Express waiver happens when a landlord and tenant explicitly agree to waive a right or claim. With express waiver, the intent of the parties is clear and unequivocal. For example, the landlord and tenant agree in writing that the notice is waived and the tenancy will be continued.

Implied waiver happens when a landlord and tenant agree to continue a tenancy, but without a clear and unequivocal expression of intent. Instead, the waiver is implied through the actions or behaviour of the landlord or tenant.

*For example, if a landlord gives a notice to end tenancy, a landlord may accept rent from the tenant for the period up to the effective date of the notice to end tenancy without waiving the notice. **However, if the landlord continues accepting rent for the period after the effective date but fails to issue rent receipts indicating the rent is for “use and occupancy only,” it could be implied that the landlord and tenant intend for the tenancy to continue.***

Intent may also be established by evidence as to:

- whether the landlord specifically informed the tenant that the money would be for use and occupancy only;*
- whether the landlord has withdrawn their application for dispute resolution to enforce the notice to end tenancy or has cancelled the dispute resolution hearing; and*
- the conduct of the parties.*

I find that the landlord's conduct of accepting full rent after the effective date of the 10 Day Notice of November 22, 2020, to be a waiver of the 10 Day Notice. I find that the tenant relied on the landlords' conduct, amounting to waiver, of continuing to accept rent from January to April 2021. The landlord stated that rent receipts for “use and occupancy only” were given to the tenant but did not provide a copy of these receipts for this hearing. The landlords were given notice of these “use and occupancy only” rent receipts in the Adjudicator's interim decision on page 2. The landlords had ample time from receiving the interim decision, dated February 3, 2021, to the hearing date of April 27, 2021, to provide this evidence for this hearing.

For the above reasons, and given the conduct of the parties, I find that the landlords waived their right to pursue an Order of Possession based on the 10 Day Notice. I find that the landlords reinstated this tenancy by accepting full rent payments from the tenant after the effective date of November 22, 2020.

On a balance of probabilities and for the reasons stated above, the landlords' 10 Day Notice, dated November 10, 2020, is cancelled and of no force or effect. This tenancy continues under the terms of the tenancy agreement, until it is ended in accordance with the Act.

As the landlords were unsuccessful in this application, I find that they are not entitled to recover the \$100.00 filing fee from the tenant.

Conclusion

The landlords' entire application is dismissed without leave to reapply.

The landlords' 10 Day Notice, dated November 10, 2020, is cancelled and of no force or effect.

This tenancy continues under the terms of the tenancy agreement, until it is ended in accordance with the *Act*.

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 27, 2021

Residential Tenancy Branch