



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

On February 12, 2021, an Adjudicator appointed pursuant to the *Residential Tenancy Act* (the *Act*) adjourned the landlord's application for dispute resolution for the following items to a participatory hearing. She did so on the basis of an *ex parte* hearing using the Residential Tenancy Branch's direct request process. The adjudicator adjourned the direct request for the following reasons:

I have reviewed all documentary evidence and I find that the business landlord's name on the tenancy agreement does not match the individual landlord named on the Application for Dispute Resolution.

I also find that the tenancy agreement is not signed by the tenant, which is a requirement of the Direct Request process.

I find these discrepancies in the tenancy agreement raise questions that cannot be addressed in a Direct Request process, and that a participatory hearing is necessary in order to protect the procedural rights of the tenant.

I have been delegated authority under the *Act* to consider the landlord's application for:

- an Order of Possession for unpaid rent pursuant to sections 46 and 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing although I left the teleconference connection open throughout the hearing which commenced at 9:30 a.m. and ended at 10:00 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in

the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord attended the hearing, represented by DZ ("landlord"). The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified that he served the tenant with the Notice of Dispute Resolution Proceedings package by registered mail on February 12, 2021. The tracking number for the mailing is recorded on the cover page of this decision. I deem the tenant served with the Notice of Dispute Resolution Proceedings package five days after it was sent by registered mail, on February 17, 2021 in accordance with sections 89 and 90 of the *Act*.

Background and Evidence

The landlord gave the following testimony. The tenant had been living in the rental unit under a previous tenancy agreement with a previous owner. The person noted on the Application for Dispute Resolution as "landlord" is the person who purchased the building in August of 2019 and became the tenant's new landlord under the same conditions as the previous tenancy. The landlord testified that there was no written tenancy agreement with the previous landlord and the tenant refused to sign a new tenancy agreement with this landlord. The reason the issuer of the notice to end tenancy is different from the applicant named on the Application for Dispute Resolution is because the issuer of the notice to end tenancy is the property management company hired by the landlord.

Since August of 2019, the tenant continued to pay rent in the amount of \$720.00 per month but stopped paying rent in April of 2020. The tenant has not made any payments of rent since March, 2020, well over a year. The landlord testified that he served the tenant with a repayment plan for arrears in rent that accrued between March 18th and August 17th, 2020, however the landlord did not provide a copy of the repayment plan for this hearing, nor did he provide proof of service of the repayment plan.

On January 4, 2021, the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to his door at 6:00 p.m. A copy of the notice, dated January 4th, indicates the tenant has failed to pay \$7,200.00 in rent. The notice provides that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of January 17, 2021.

The landlord testified that the notice to end tenancy shows the tenant was in arrears of 10 months of rent at \$720.00 per month for a total of \$7,200.00. Since serving the notice, the tenant's arrears continue to grow, and the tenant now owes an additional (\$720.00 x 4 = \$2,880.00) in rent.

Analysis

I find the issues identified by the adjudicator in her interim decision dated February 12, 2021 have been addressed to my satisfaction. The landlord stated in the notice to end tenancy is the property management company hired by the landlord named as the applicant in this dispute resolution proceeding. There is no signed tenancy agreement between these parties as the landlord purchased the rental unit with the tenancy already in place.

I deem the tenant served with the landlord's notice to end tenancy on January 7, 2021, three days after it was posted to his door pursuant to sections 89 and 90 of the *Act*.

Section 46 of the *Act* states:

Within 5 days after receiving a notice under this section, the tenant may pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution, 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.

The tenant failed to pay the full rent identified as owing on the Notice or make an application to dispute it within five days of receiving it, pursuant to section 46(4) of the *Act*. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days ended his tenancy on the effective date of the Notice. In this case, this required the tenant to vacate the premises by January 17, 2021. As the tenant has not yet vacated the premises, I find the landlord is entitled to an Order of Possession effective 2 days after service.

While I note that the landlord has not provided evidence of the repayment plan for affected rent from March 18th to August 17th, 2020, the tenant did not file an Application for Dispute Resolution Proceedings or attend this hearing to dispute the landlord's failure to provide a copy of it for this hearing. The tenant is nonetheless conclusively

presumed to have accepted the tenancy ended on the effective date stated on the notice in accordance with section 46(5) of the *Act*.

Rule 4.2 of the Residential Tenancy Branch Rules of Procedure state: in circumstances that can be reasonably anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. I accept the landlord's undisputed testimony that the tenant has not paid rent of \$720.00 per month from April 2020 to May, 2021. In accordance with section 64(3) of the *Act* and rule 4.2 of the rules, I allow the landlord to amend his claim to include unpaid rent for February to May 2021. I award the landlord a monetary order in the amount of \$10,080.00 representing unpaid rent from April 2020 to May 2021. ($\$720.00 \times 14 = \$10,080.00$)

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**.

I issue a monetary order in the landlord's favour in the amount of **\$10,180.00**.

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: May 10, 2021

Residential Tenancy Branch