



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, CNR, FF

Introduction

This was a cross-application hearing for Dispute Resolution under the *Residential Tenancy Act* (“the Act”).

On March 12, 2021, the Tenants applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

On March 16, 2021, the Landlords applied for an order of possession for the rental unit based on the issuance of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and a monetary order for unpaid rent.

This matter was set for hearing by telephone conference call at 1:30 pm on this date. The Landlord attended the hearing; however, the Tenants did not. The line remained open while the phone system was monitored for thirty-eight minutes and the Tenants did not call into the hearing during this time.

The Landlord provided affirmed testimony that the Tenants were served with the Notice of Dispute Resolution Proceeding in person at the rental unit on March 24, 2021. The Landlord testified that she also emailed the Notice of Dispute Resolution Proceeding to each Tenant. I find that the Tenants were served with notice of the hearing in accordance with sections 89 and 90 of the Act. The hearing proceeded.

The Landlord was provided with an opportunity to ask questions about the hearing process. She was provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. She testified that she served a copy of her evidence to the Tenants prior to the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to an order of possession due to non-payment of rent?
- Is the Landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The Landlord testified that the tenancy began on November 1, 2020 on a month to month basis. Rent in the amount of \$1,695.00 is due to be paid to the Landlord by the first day of each month. The Tenants paid the Landlord a security deposit of \$850.00. The Landlord provided a copy of the tenancy agreement.

The Landlord testified that all the rent owing for March 2021 was not paid when it was due. The Landlord permitted the Tenants to apply the security deposit of \$850.00 towards the unpaid March 2021 rent; however, an additional \$847.50 in rent was owing.

The Landlord testified that the Tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 10, 2021. The Landlord issued another 10 Day Notice to the Tenants in person on March 12, 2021 because she believed the first 10 Day Notice was incomplete. The 10 Day Notice dated March 10, 2021 and March 12, 2021 indicates the Tenants have failed to pay \$847.50 that was due on March 1, 2021.

The 10 Day Notices informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notices also explains the Tenant had five days to dispute the Notice. The Tenants disputed the 10 Day Notice dated March 10, 2021 within the required time period; however, they failed to attend the hearing to pursue the dispute.

The Tenant's application to cancel the 10 Day Notice dated March 10, 2021 is cancelled.

The Landlord testified that the Tenants did not pay all the rent owing under the tenancy agreement for March 2021 within 5 days of receiving the 10 Day Notice(s). The Landlord testified that the Tenant did pay \$850.00 towards March rent on March 23, 2021 using e-transfer. Since the rent was not paid by the Tenant within 5 days of

receiving the 10 Day Notice, the Landlord is requesting an order of possession for the rental unit.

The Landlord testified that the Tenant Mr. S.K. continues to live in the rental unit and he has not been paying all the rent owing under the tenancy agreement.

The Landlord requested to amend her application to include a claim for unpaid rent for the months of April 2021, May 2021, and June 2021.

The Landlord testified that she received the following payments of rent from Mr. S.K:

<u>Month</u>	<u>Rent Paid</u>	<u>Rent Owing</u>
April 2021	\$1,500.00	\$195.00
May 2021	\$850.00	\$850.00
June 2021	\$0	\$1,695.00
	total owing	\$2,740.00

Analysis

Section 26 of the Act states that a Tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the 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.

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I make the following findings:

I find that the Tenant failed to pay all the rent that was due for March 2021 within five days of receiving the 10 Day Notice to End Tenancy for Unpaid rent dated March 10, 2021.

The Tenant failed to attend the hearing and I dismiss the Tenant's application to cancel the 10 Day Notice dated March 10, 2021. The Landlord is entitled to an order of possession for the rental unit.

I also accept the Landlord's testimony that she served another 10 Day Notice on March 12, 2021. The Tenant did not dispute this 10 Day Notice and did not pay all the rent owing within 5 days of receiving this notice.

I find that the Tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the 10 Day Notice dated March 12, 2021.

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 also find that the Tenant has not paid all the rent for the months of April, May and June 2021, and the Landlord has suffered a loss of rent for these months. The Tenant remains living in the rental unit and is aware that he is required to pay the rent each month and therefore, pursuant to section 64 of the Act, I allow the Landlord's claim to be amended to include the additional months of unpaid rent in the amount of \$2,740.00.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenants to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I grant the Landlord a monetary order for unpaid rent and the filing fee in the amount of \$2,840.00.

Conclusion

The Tenants failed to pay all the rent due under the tenancy agreement for March 2021 within 5 days of receiving the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and did not have a legal reason for withholding the rent.

The Landlord is granted an order of possession for the rental unit effective 2 days after service on the Tenants.

The Landlord is granted a monetary order for unpaid rent and the filing fee in the amount of \$2,840.00.

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: June 21, 2021

Residential Tenancy Branch