



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL
 CNR, CNL, OLC, MNDCT, RP, LRE, FFT

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenants. The landlord applied by way of the Direct Request process for an Order of Possession and a monetary order for unpaid rent or utilities and to recover the filing fee from the tenants for the cost of the application, which was referred to this participatory hearing.

The tenants have applied for:

- an order cancelling a notice to end the tenancy for unpaid rent or utilities;
- an order cancelling a notice to end the tenancy for landlord's use of property;
- an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement;
- an order that the landlord make repairs to the rental unit or property;
- an order limiting or setting conditions on the landlord's right to enter the rental unit; and
- to recover the filing fee from the landlord.

The landlord and one of the tenants attended the hearing, and the tenant also represented the other tenant. The parties each gave affirmed testimony and were given the opportunity to question each other.

At the commencement of the hearing, the tenant indicated that the tenants' application and notice of this hearing (the Hearing Package) was served on the landlord by placing the

documents in the mailbox at the landlord's residence. The *Residential Tenancy Act* specifies that such documents must be served by:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
- (f) by any other means of service provided for in the regulations.

The regulations permit service by email, but not by leaving in a mailbox or other conspicuous place. Since the tenant has not served the landlord by any of the methods described above, I am not satisfied that the landlord has been served in accordance with the *Act*, and the tenants' application is dismissed.

Issue(s) to be Decided

The issues remaining to be decided are:

- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was given in accordance with the *Residential Tenancy Act*?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?

Background and Evidence

The landlord testified that this fixed term tenancy began on September 1, 2018 and expired on September 1, 2019 thereafter reverting to a month-to-month tenancy and the tenants still reside in the rental unit. Rent in the amount of \$2,233.00 is payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$825.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a single family home, and a copy of a tenancy agreement has been provided as evidence for this hearing. It is signed by the

landlord and by the tenants on September 1, 2018, and the landlord testified that it was the newest agreement signed by the parties.

The landlord further testified that on May 3, 2021 the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent by registered mail. A copy has been provided for this hearing, which is dated May 3, 2021 and contains an effective date of vacancy of May 14, 2021 for unpaid rent in the amount of \$1,233.00 that was due on May 1, 2021. Also provided are 2 Registered Domestic Customer Receipts and a Canada Post cash register receipt dated May 3, 2021.

The tenants paid \$1,000.00 for the month of May, 2021, but have not paid any rent since the Notice was issued and rental arrears have accumulated to \$5,699.00.

The landlord further testified that the tenants were served with a Two Month Notice to End Tenancy for Landlord's Use of Property in the same envelope as the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The tenants were advised that they would receive 1 month of rent free, however the effective date of the Two Month Notice was July 15, 2021, and the tenants didn't move out.

The landlord seeks an Order of Possession for unpaid rent, a monetary order for the unpaid rent of \$5,699.00, and recovery of the \$100.00 filing fee.

The tenant testified that there have always been arrangements between the parties regarding late rent, and the tenant has always been up-front about it. It comes down to a lack of repairs.

The landlord told the tenant that if she were to vacate by July 15, 2021 the tenant would get 1 month rent free. The tenant has been putting some belongings in storage and is looking for another place.

A lot of this has to do with lack of repairs, and the tenant seeks repair to the plumbing. The tenant told the landlord for the need multiple times. The landlord asked the tenant to get a quote, but the landlord refused to fix it. The landlord installed an RV toilet with an RV pump below ground level and the basement flooded. The landlord told the tenant that her husband was smart and he could fix it.

Analysis

The *Residential Tenancy Act* specifies that a tenant must pay rent when it is due even if the landlord fails to comply with the *Act* or the tenancy agreement. It does not come

down to lack of repairs. The tenant had other remedies, such as an application to the Residential Tenancy Branch to rectify any need for repairs, but must still pay the rent.

The *Act* also specifies that once served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice), the tenant has 5 days to pay the rent or dispute the Notice. If the tenant pays the rent, the Notice is of no effect, but if the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy.

In this case, the Notice was served by registered mail on May 3, 2021, which is deemed to have been served 5 days later, or May 8, 2021. The tenant disputed the Notice on May 17, 2021 which is 9 days after service. The tenant does not dispute that rent has not been paid, and I find that the landlord is entitled to an Order of Possession. Since the effective date of vacancy has passed, I grant the Order of Possession effective on 2 days notice to the tenants.

I am also satisfied that the landlord has established a claim of unpaid rent in the amount of \$5,699.00, comprising of the \$1,233.00 owed for May, 2021 and \$2,233.00 for each of the months of June and July, 2021.

The landlord testified that he also served a Two Month Notice to End Tenancy for Landlord's Use of Property effective July 31, 2021, and where a landlord does so, the landlord must provide compensation to the tenant in the amount equivalent to 1 month's rent. No one has provided a copy of the Two Month Notice, and having dismissed the tenants' application, I make no findings of fact or law with respect to its validity.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee.

The landlord currently holds a security deposit of \$825.00 in trust, but has not made an application to keep it. The tenants must provide the landlord with a forwarding address in writing within 1 year after the tenancy ends, and if the tenants fail to do so, the landlord may keep the security deposit. The landlord will have 15 days from the later of the date the tenancy ends or the date the landlord receives the tenants' forwarding address in writing to return the security deposit or make an Application for Dispute Resolution claiming against it.

Conclusion

For the reasons set out above, I hereby dismiss the tenants' application in its entirety without leave to reapply.

I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenants.

I further grant a monetary order in favour of the landlord as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$5,799.00.

This order is final and binding and may be enforced.

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: July 22, 2021

Residential Tenancy Branch