



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Skyline Living
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the tenant: CNR
For the landlord: OPR-DR, MNR-DR, FFL

Introduction

On May 11, 2021 the tenant applied for dispute resolution for an order cancelling the 10-Day Notice to End Tenancy Issued for Unpaid Rent or Utilities (the “10-Day Notice”) issued by the landlord on May 7, 2021.

On May 14, 2021 the landlord applied for an order of possession of the rental unit, and a monetary order for rent not paid. Additionally, they applied for reimbursement of the application filing fee. The landlord’s application here was filed initially as a Direct Request. The matter proceeded by way of participatory hearing because this Direct Request application cannot be considered by that method when there is a cross-application by the tenant in place.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on September 20, 2021. The landlord attended the telephone conference call hearing; the tenant did not attend.

Preliminary Matter

To proceed with this hearing, I must be satisfied that the landlord made reasonable attempts to serve the tenant with the notice of this hearing. This means the landlord must provide proof that the document was served in a verified manner allowed under s. 89 of the *Act* and I must accept that evidence. In the hearing the landlord stated that they served a copy of that document via registered mail to the tenant on May 27, 2020. They provided proof of registered mail with a tracking number. This shows the package – including the landlord’s evidence -- was delivered on June 14, 2021.

The tenant did not attend the hearing, although I left the teleconference hearing connection open until 9:42 a.m. to enable them to call in to this teleconference hearing scheduled for 9:30 a.m. I confirmed the correct call-in numbers and participant codes were provided in the Notice of Hearing generated when the tenant applied. I also confirmed throughout the duration of the call that the tenant was not in attendance.

Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* provides that if a party or their agent fails to attend the hearing, the arbitrator may conduct the hearing in the absence of that party or dismiss the application without leave to reapply. On this basis, I dismiss the tenant's application for cancellation of the 10-Day Notice. This is without leave to reapply on this issue.

Issue(s) to be Decided

Is the landlord entitled to issue an Order of Possession pursuant to s. 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to s. 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

Background and Evidence

The landlord spoke to the terms of the tenancy agreement, a copy of which they provided as evidence. The tenancy began on September 15, 2020 for a fixed term ending on September 30, 2021. The rent amount was \$1,680 per month payable on the first day of each month. The tenant paid a security deposit of \$840. The tenant was not in attendance at this hearing; therefore, there is no information contrary to that presented by the landlord on this document.

The landlord provided a copy of the 10-Day Notice, issued May 7, 2021. This document gave the move-out date of May 17, 2021. This listed the failure by the tenant to pay the rent of \$11,800 on May 1, 2021. The landlord served this document by taping it onto the front door. As provided in a 'Proof of Service' document, the tenant accepted service of this document via hand delivery on May 7, 2021. A witness also signed the document to show they observed this service to the tenant directly.

The landlord provided a document entitled "Rent Breakdown" showing the unpaid rent since the start of the tenancy. This is the accumulation of \$1,680 per month through to May 2021, totalling \$11,800 as indicated on the 10-Day Notice.

In addition, the landlord in the hearing presented that more rent accumulated when the tenant overstayed in the rental unit after service of the 10-Day Notice on May 7. The tenant vacated at the end of August 2021. This was after the landlord obtained an executed a Writ of Possession, hiring a bailiff to evict the tenant on August 23, 2021. For this hearing, the landlord updated their monetary claim to add the months of June, July, and August, totalling \$16,840. In essence, the tenant did not pay rent for the entirety of the tenancy.

Analysis

From the evidence and testimony of the landlord, I am satisfied that a tenancy agreement was in place. They provided the specific terms of the rent payments as well as the amount the tenant paid for the security deposit. The tenant did not attend the hearing; therefore, there is no evidence before me to show otherwise.

I accept the undisputed evidence before me that the tenant failed to pay the rent owed in full by May 1, 2021, within the five days granted under s. 46(4) of the *Act*. The tenant did not dispute the 10-Day Notice within that five-day period. The tenant is conclusively presumed under s. 46(5) of the *Act* to have accepted that the tenancy ended on the effective day of the 10-Day Notice, May 17, 2021. Though the landlord is entitled to an Order of Possession, I find as fact that the landlord executed a Writ of Possession and the tenant already vacated. There is thus no need for an Order of Possession here.

The *Act* s. 26 outlines a tenant's duty to pay rent:

- (1) A tenant must pay rent when it is due under the tenancy agreement, whether 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.

I accept the evidence before me that the tenant failed to pay full rent for October 2020 through to the final month of their occupancy, August 2021. The landlord provided detailed evidence in the form of a ledger. As presented, I find the landlord is entitled to the amount of \$16,840 as they claim.

The *Act* s. 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlord. The landlord has established a claim of \$16,840. After setting off the

security deposit amount of \$840, there is a balance of \$16,000.00. I am authorizing the landlord to keep the security deposit and award the balance of \$16,000.00 as compensation for rent owing.

As the landlord is successful, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

In the absence of the tenant, I dismiss their application in its entirety and without leave to re-apply.

Pursuant to s. 67 and s. 72 of the *Act*, I grant the landlord a separate Monetary Order for the recovery of the amounts claimed and the filing fee paid for this application. This amount is \$16,100.00. The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: September 23, 2021

Residential Tenancy Branch