



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNU-DR, OPU-DR, FFL**

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) by the landlord filed on March 26, 2021, for an order of possession, for a monetary order for unpaid rent and to recover the cost of the filing fee.

The Application originally proceeded by the Direct Request process and on April 21, 2021 the Adjudicator determined this matter should be adjourned to a participatory hearing, with a reconvene date of August 17, 2021. The interim decision dated April 21, 2021 should be read in conjunction with this Decision.

On August 17, 2021, only the landlord appeared, I had determined that a technical issue may have occurred, as the landlord indicated that they did not receive a copy of the April 21, 2021, interim decision and as a result the tenant was not served. I found it appropriate to adjourn the matter and have the hearing rescheduled to my first available date, September 17, 2021. The interim decision dated August 17, 2021 should be read in conjunction with this Decision.

At the outset of the hearing the landlord stated that they complied with my interim decision dated August 17, 2021 and served the tenant the documents by registered mail sent on August 24, 2021. A Canada post tracking number was provided as evidence. The Canada post history shows that the package was available for the tenant to pickup on August 26, 2021 and the tenant was left a final notice to pickup the package on September 2, 2021. I find the tenant was deemed served on August 31, 2021, pursuant to section 90 of the Act. Refusal or neglect to pickup does not override the deemed service provision of the Act and is not grounds for review.

The landlord stated that the original Notice of Direct Request Proceeding was served on the tenant by registered mail sent on March 30, 2021. A Canada post tracking number

was provided. The Canada post history shows the package was available for the tenant to pickup on March 31, 2021 and the tenant was left a final notice to pickup the package on April 11, 2021. The package was returned to the sender unclaimed. I find the tenant was deemed to have received the package on April 4, 2021, pursuant to section 90 of the Act. Refusal or neglect to pickup does not override the deemed service provision of the Act and is not grounds for review.

Based on the above Canada post history, I am satisfied that the tenant is a voiding service, as the tenant had accepted documents served in this matter on February 3, 2021, which I will later referred to in this Decision.

Issues to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The landlord testified that the original Adjudicator had questioned why the name in the tenancy agreement is different than the name on the Application. The landlord stated that they are a limited company and own the property jointly with his wife. The landlord stated that the name of the landlord in the tenancy agreement is his wife.

The landlord testified that the current monthly rent is \$1,400.00 per month and the tenant had failed to pay rent for October, November, December of 2020 and for January, February of 2021. The landlord stated that the tenant did make two payments for rent owed as they received \$500.00 on November 20, 2020 and \$500.00 on December 7, 2021. This leaving a balance due of unpaid rent of \$6,000.00. ($5 \times \$1,400.00 = \$7,000 - \$1,000.00 = \$6,000.00$).

The landlord testified that they served the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") issued on February 1, 2021, which was sent by registered mail on February 2, 2021. A Canada post tracking number was provided as evidence. The Canada post history shows the package was successfully delivered to the tenant on February 3, 2021. This supports my finding that the tenant is avoiding service of the hearing documents.

The landlord testified that the tenant did not pay the outstanding rent of \$6,000.00 or dispute the Notice. The landlord stated that the tenant has not paid any rent since the

Notice was issued resulting in another seven (7) months of unpaid rent of \$9,800.00. The landlord seeks an order of possession and a monetary order for unpaid rent in the total amount of \$15,800.00.

Analysis

Based on the above, the testimony, and evidence, and on a balance of probabilities, I find as follows:

I am satisfied that the named applicant is a landlord as defined in Part 1 of the Act, Definitions and had the right to make this Application, as the limited company is the owner of the rental unit.

I have reviewed the Notice; I find the Notice complies with section 52 of the Act.

The tenant has not paid the outstanding rent and did not apply to dispute the notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice. I find the tenancy legally ended on February 15, 2021, the effective date of the Notice. I find the tenant is overholding the premise as an occupant.

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 find that the landlord has established a total monetary claim for unpaid rent in the amount of **\$15,800.00**, pursuant to section 55(1.1) of the Act.

I find that the landlord has established a total monetary claim in the amount of **\$15,900.00** comprised of unpaid rent, and the \$100.00 fee paid by the landlord for this application. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The tenant failed to pay rent and did not file to dispute the notice to end tenancy. The tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the notice to end tenancy.

The landlord is granted an order of possession and a monetary order for the unpaid rent.

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: September 17, 2021

Residential Tenancy Branch