



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

This hearing dealt with the adjourned Direct Request Application by the Landlords filed under the Residential Tenancy Act (the “*Act*”) for an order of possession to enforce a 10-Day Notice for Unpaid Rent and Utilities (the Notice) issued on April 2, 2021, for a monetary order for unpaid rent, and to recover the filing fee paid for this application. The matter was set for a conference call.

Both Landlords attended the hearing and were each affirmed to be truthful in their testimony. As the Tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered. Section 59 of the *Act* states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlords testified that they personally served the Tenant with the Notice of Hearing documents on May 13, 2021. The Landlord submitted a Notice of Dispute Resolution Hearing document, signed, and dated by the Tenant as proof of service. I find that the Tenant had been duly served in accordance with the *Act*.

The Landlord was provided with the opportunity to present her evidence orally and in written and documentary form and to make submissions at 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

- Are the Landlords entitled to an order of possession pursuant to section 46 of the Act?
- Are the Landlords entitled to a monetary order for unpaid rent?
- Are the Landlords entitled to the return of their filing fee?

Background and Evidence

While I have considered all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement records that this tenancy began March 1, 2020, as a six-month fixed term tenancy. Rent in the amount of \$575.00 was to be paid by the first day of each month, and that the Landlords collected a \$287.50 security deposit for this tenancy. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

The Landlords testified that they personally served the Tenant with the Notice to End Tenancy on April 2, 2021, with an effective date of April 12, 2021. The Notice informed the Tenant of the right to dispute the Notice or pay the outstanding rent within five days after receiving it. The Notice also informed the Tenants that if an application to dispute the Notice or payment of the outstanding rent in full is not made within five days, the Tenants are presumed to have accepted the Notice and must move out of the rental unit on the date set out on page one of the Notice.

The Landlords testified that as of the date of this hearing, the Tenant was outstanding \$900.00 in rent, consisting of \$600.00 in rent for April 2021 and \$300.00 in a half month rent for May 2021. The Landlords testified that they are requesting a Monetary Ordre for the outstanding rent for this tenancy.

Analysis

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

I accept the testimony of the Landlord they served the Tenant with the Notice to end on April 2, 2021, by posting the Notice to the front door of the rental unit. Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent, a tenant must, within five days, either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do either of these things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice under section 46(5).

Landlord's notice: non-payment of rent

46 (1) *A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.*

(2) *A notice under this section must comply with section 52 [form and content of notice to end tenancy].*

(3) *A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.*

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

(5) *If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant*

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
(b) must vacate the rental unit to which the notice relates by that date.

I accept the testimony of the Landlords that the Tenant moved out of the rental unit on May 16, 2021. I find that the Tenant moved out in accordance with the Landlord's Notice to end tenancy.

I find that as this tenancy has already ended in accordance with the Act, and that there is no requirement for an Order of Possession. Therefore, I dismiss the Landlord's application for an Order of Possession of the rental unit.

The Landlords testified that the Tenant had not paid the outstanding rent for April 2021 in the amount of \$600.00 and a half months rent for May 2021 in the amount of \$300.00 for this tenancy. After reviewing the tenancy agreement for this tenancy, I find the Landlords' testimony to be inconsistent with the signed tenancy agreement, as the contracted month rent for this tenancy is \$575.00. As the Landlords did not offer an explanation for this inconsistency in the testimony they offered during these proceedings; I find that I must dismiss, with leave to reapply, the Landlords' application for a monetary order for unpaid rent.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlords have not been successful in their application, I find that the Landlords are not entitled to recover the \$100.00 filing fee paid for their application.

Conclusion

The Landlord's application for an order of possession and recovery of the filing fee is dismissed without leave to reapply.

The Landlord's application for a monetary order for unpaid rent is dismissed, with leave to reapply.

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 7, 2021

Residential Tenancy Branch