



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL

Introduction

This hearing was scheduled to convene at 9:30 a.m. this date by way of conference call concerning an application made by the landlords seeking an Order of Possession and a monetary order for unpaid rent or utilities and to recover the filing fee from the tenant for the cost of the application. The application was made by way of the Direct Request process which was referred to this participatory hearing and a Decision was provided to the landlords which ordered the landlords to serve the tenant with the application, Decision and notice of this hearing within 3 days of receiving the Decision.

One of the landlords attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenant joined the call.

The landlord testified that the tenant was served with the documents by registered mail on June 2, 2021 and has provided a Registered Domestic Customer Receipt addressed to the tenant and a Canada Post cash register receipt dated June 2, 2021 and I find that the tenant has been served in accordance with the *Residential Tenancy Act* and order of the director.

All evidence of the landlords has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Have the landlords established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*?

- Have the landlords established a monetary claim as against the tenant for unpaid rent or utilities?

Background and Evidence

The landlord testified that a tenancy agreement was made between the landlords and a tenant for rent in the amount of \$1,800.00 payable on the 1st day of each month commencing on December 1, 2016 on a month-to-month basis. A copy of the tenancy agreement has been provided as evidence for this hearing. However, the tenant named in the agreement passed away after this tenant moved in; the landlord does not know when the tenant passed away, but the landlord learned of it in December, 2020.

At the outset of the tenancy the landlord collected a security deposit in the amount of \$900.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is the upper portion of an up-down duplex, and the landlords do not reside on the property.

The tenant named in this application has been collecting rent from other tenants in the amount of \$550.00 each, which also covers the hydro bills, and currently there are 5 people living in the rental unit. One has given notice to end the tenancy effective on September 30, 2021, and a hearing is scheduled for tomorrow for another one of the tenants. The landlords have not collected rent from any of the tenants, and claims \$550.00 for each of the months of March through September, 2021.

On March 2, 2021 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by handing the document to an adult person who apparently resides with the tenant, and the person served signed the Proof of Service document. Copies of the Proof of Service document and the Notice have been provided for this hearing. The Notice is dated March 2, 2021 and contains an effective date of vacancy of March 17, 2021 for unpaid rent in the amount of \$1,650.00 that was due on March 2, 2021. The tenant has not served the landlords with an Application for Dispute Resolution disputing the Notice and the landlords seek an Order of Possession and a monetary order for unpaid rent.

Analysis

Firstly, the *Residential Tenancy Act* states 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 in full or dispute the Notice by filing and serving the landlords with an Application for

Dispute Resolution. If the tenant fails to do either within that 5 day period, the tenant is conclusively presumed to have accepted the end of the tenancy.

In this case, I have reviewed the Proof of Service document, and I am satisfied that the tenant was served by serving an adult person who apparently resides with the tenant, on March 2, 2021. The landlord testified that the tenant has not paid the rent and has not served the landlords with an Application for Dispute Resolution disputing the Notice, and I have no such application before me. Therefore, I find that the tenant is conclusively presumed to have accepted the end of the tenancy and the landlords are entitled to an Order of Possession.

Since the effective date of vacancy contained in the Notice has passed, I grant the Order of Possession effective on 2 days notice to the tenant.

With respect to the monetary claim, the landlord testified that the tenant is collecting \$550.00 per month from each of the occupants which is also meant to cover the hydro bills. However, if the tenant took over the tenancy agreement, it specifies rent in the amount of \$1,800.00 per month, regardless of how many occupants there are. If the occupants each pay \$550.00 per month, that would equate to \$2,750.00 per month, and \$950.00 of that would be for hydro.

There is absolutely no evidence before me that the tenant or any of the occupants agreed to \$550.00 per month, and no evidence to satisfy me of what the rental arrears are, and I dismiss the landlord's application for a monetary order for unpaid rent.

Since the landlords have been partially successful with the application, the landlords are also entitled to recovery of the \$100.00 filing fee, and I order that the landlords may keep that amount from the security deposit held in trust.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlords effective on 2 days notice to the tenant.

The landlords' application for a monetary order for unpaid rent or utilities is hereby dismissed without leave to reapply.

I hereby order the landlords to keep \$100.00 of the security deposit held in trust as full recovery of the filing fee.

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: September 23, 2021

Residential Tenancy Branch