



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL

Introduction

This hearing was scheduled to convene at 11:00 a.m. this date by way of conference call concerning an application made by the landlord 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 an Interim Decision was provided to the landlord.

The landlord was represented at the hearing by an agent, who gave affirmed testimony and provided evidentiary material in advance of the hearing, and was accompanied by a Manager, who did not testify or take part in the hearing. However, the line remained open while the telephone system was monitored for in excess of 10 minutes prior to hearing any testimony and no one for the tenant joined the call.

The landlord's agent testified that the tenant was served with the Interim Decision and notice of this hearing, along with copies of all evidence, by registered mail on July 14, 2021. However the tenant did not pick up the mail and it was returned to the landlord. The tenant was thereafter served personally in the landlord's office. The *Residential Tenancy Act* specifies that documents served by registered mail are deemed to have been served 5 days after mailing. The landlord has provided a copy of a Registered Domestic Customer Receipt addressed to the tenant as well as a Canada Post cash register receipt dated July 14, 2021 and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act* and the Interim Decision.

During the course of the hearing the landlord's agent testified that the tenant paid the rent within 5 days, and the landlord withdraws the applications for an Order of Possession and monetary order for unpaid rent.

Issue(s) to be Decided

The issue remaining to be decided is:

- Is the landlord entitled to recovery of the filing fee from the tenant?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on October 1, 2020 and the tenant still resides in the rental unit. Rent is subsidized and the tenant's share is \$510.00 per month payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$712.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment in a building containing 3 floors and 11 suites, and the landlord's agent also resides on the property. A copy of the tenancy agreement has been provided for this hearing however some pages appear to be missing.

The landlord's agent further testified that on May 5, 2021 the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and a copy has been provided for this hearing. It is dated May 5, 2021 and contains an effective date of vacancy of May 15, 2021 for unpaid rent in the amount of \$650.00 that was due on May 5, 2021.

Tenants are required to pay rent at a bank and provide a receipt to the landlord's agents in order for the landlord to know which tenants have paid their rent; there are many buildings and tenancies and it took the landlord a long time to find out that the tenant had paid the rent, which was paid in full on May 10, 2021.

The subsidized housing requires that the tenant pays 30% of the tenant's income, and the tenant was successful in claiming CERB which increased the rental amount. A rent review resulted in an increase to \$650.00 from January 1, 2021 to March 31, 2021, and the tenant signed the review documents on April 28, 2021. Rent went back to \$510.00 effective August 1, 2021 and will remain at that amount until April 30, 2022.

Although the tenant is currently in arrears of rent the sum of \$510.00 for this month, the landlord seeks only recovery of the filing fee of \$100.00 to impress upon the tenant that

rent must be paid on the 1st day of each month and the tenant must provide a receipt to the landlord's agents to prove that it was paid on time.

Analysis

Firstly, a tenant must pay rent when it is due under the tenancy agreement. I accept the undisputed testimony of the landlord that rent is due on or before the 1st day of each calendar month. If a tenant fails to pay the rent on time the landlord may serve a notice to end the tenancy, in which case the tenant has 5 days to pay the rent or to dispute the notice to end the tenancy. In this case, the tenant paid the rent within 5 days, and therefore the notice to end the tenancy is of no effect. Therefore, the landlord's application for an Order of Possession cannot succeed, and I dismiss that portion of the landlord's application.

Even though the landlord testified that the tenant has not paid rent for the month of October, 2021 and is currently in arrears the sum of \$510.00, the landlord does not seek a monetary order for unpaid rent, but claims recovery of the filing fee. A filing fee is only awarded in situations where the claiming party is successful in an application for dispute resolution. Having dismissed the landlord's application for an Order of Possession, and no claim has been made for a monetary order for unpaid rent, I cannot order that the landlord recover the filing fee from the tenant.

Pursuant to Section 62 of the *Residential Tenancy Act*, as set out below, I hereby order the tenant to comply with the *Act* and the tenancy agreement and pay rent on or before the 1st day of each calendar month AND provide the landlord's agents with a receipt in order for them to determine who has paid rent and who has not.

62 (3) The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed in its entirety without leave to reapply.

I hereby order the tenant to comply with the tenancy agreement and the *Residential Tenancy Act* by paying rent when it is due and by providing the landlord's agents with proof of such payment each month.

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: October 15, 2021

Residential Tenancy Branch