



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL, OPR-DR, MNR-DR**

Introduction

On September 18, 2019, an Adjudicator appointed pursuant to the *Residential Tenancy Act* (the *Act*) adjourned the landlord's application for dispute resolution for the following items to a participatory hearing. She did so on the basis of an *ex parte* hearing using the Residential Tenancy Branch's direct request process. The adjudicator adjourned the direct request for the following reasons:

In this type of [Direct Request] matter, the landlord must prove that they served the tenants with the 10 Day Notice in a manner that is considered necessary as per sections 71(2) (a) and 88 of the Act.

On the first page of the Proof of Service Notice to End Tenancy the landlord has indicated they served the 10 Day Notice to the tenants on May 27, 2021. However, on the second page of the form, the witness has indicated they observed the landlord serve the 10 Day Notice on June 7, 2021.

As I am not able to confirm service of the 10 Day Notice to the tenants, which is a requirement of the Direct Request Proceeding, I find that a hearing is necessary to address this issue.

I have been delegated authority under the *Act* to consider the landlord's application for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 11:30 a.m. in order to enable the tenants to call into this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing

and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that she served the named tenants, AS and SL with the Notice of Dispute Resolution Proceedings by registered mail on June 30, 2021. The tracking numbers for the mailings are recorded on the cover page of this decision. The landlord testified the tenants were residing at the rental unit between June 30th and the middle of August and that the address the notices were sent to was the current residence of the tenants at the time. I deem the tenants, AS and SL served with the Notice of Dispute Resolution Proceedings five days after mailing, or July 5, 2021 in accordance with sections 89 and 90 of the *Act*.

The landlord testified that the third named tenant, JH is deceased and could not be served. The landlord did not amend her application to name personal representative of the deceased tenant and I dismiss the landlord's application against the tenant JH without leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

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

Can the landlord recover the filing fee?

Background and Evidence

The landlord submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement indicating a monthly rent of \$2,050.00, due on the first day of each month for a tenancy commencing on December 1, 2020
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated May 27, 2021, for \$2,075.00 in unpaid rent. The 10 Day Notice provides that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of June 6, 2021
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was personally served to the tenants
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy. The Direct Request Worksheet noted that \$950.00 of the \$2,075.00 identified as owing in the 10 Day Notice was paid on June 2, 2021

The landlord testified that the tenants vacated the rental unit in August, 2021. SL moved out in mid-August and AS moved out at the end of August, 2021. The tenants paid no rent for the months of June, July and August. The landlord sought to amend the amount sought for arrears to include unpaid rent for those months. [\$2,050.00 x 3 = \$6,150.00]

The landlord testified that she personally served the tenant AS with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on May 27th, 2021. There was an error on the landlord's proof of service document that erroneously shows it was served on June 7th. The landlord states the tenants have accepted the notice to end tenancy and vacated the unit. The rental unit is now occupied by new tenants.

The amount of rent owing shown on the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities of \$2,075.00 includes \$2,050.00 owing for May 1, 2021 plus arrears of \$25.00 owing from April 2021. On June 2nd, the tenants paid the landlord \$950.00 towards arrears, however the full amount of arrears was not paid off within five days of being served with the notice to end tenancy. The tenants owe \$1,125.00 in arrears for April and May rent [\$2,075.00 - \$950.00 = \$1,125.00].

Analysis

I find that the tenants accepted the validity of the Notice to End Tenancy or otherwise agreed to terminate the tenancy on August 31, 2021. Pursuant to section 44(1)(f), I order the tenancy ended on that date. As such, it is not necessary for me to determine on the merits whether the Notice to End tenancy was valid and I make no findings with respect to its validity. As the tenant has already moved out of the rental unit, it is not necessary for an order of possession to be granted.

In accordance with rule 4.2 of the Residential Tenancy Branch Rules of Procedure and section 64(3) of the *Act* I find it reasonable to grant the landlord's application to amend the Application for Dispute Resolution to include additional arrears until the tenancy ended, August 31, 2021 in this case.

Section 26 of the *Act* is clear, a tenant must pay rent when it is due under the tenancy agreement, whether or not 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 find that neither tenant had a right to deduct any portion of the rent. The tenants were obligated to pay the landlord \$2,050.00 per month rent and failed to do so.

Item	Amount
------	--------

April rent	\$25.00
May rent	\$2,050.00
Less payment made June 2, 2021	(\$950.00)
June rent	\$2,050.00
July rent	\$2,050.00
August rent	\$2,050.00
Total	\$7,275.00

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

The tenancy ended on August 31, 2021 pursuant to section 44(1)(f). As such, I decline to issue an order of possession and the landlord's application is dismissed without leave to reapply.

Pursuant to section 67, I issue a monetary order in the landlord's favour in the amount of **\$7,375.00** against the tenants, AS and SL. The application against the third tenant is dismissed without 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: October 07, 2021

Residential Tenancy Branch