



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR OPC MNRL MNDCL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- an order of possession for non-payment of rent pursuant to section 55;
- an order of possession for cause pursuant to section 55; and
- a monetary order for unpaid rent and loss of ability to collect rent in the amount of \$16,320 pursuant to section 67.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:10 am in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 am. The landlord and her agent ("**SM**") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord, SM, and I were the only ones who had called into this teleconference.

SM testified he served that the tenant with the notice of dispute resolution form, amendment to the application, and supporting evidence package by posting it on the door of the rental unit on July 28, 2021. I find that the tenant was deemed served with this package on July 31, 2021, three days after SM posted it, in accordance with sections 88, 89, and 90 of the Act.

Issues to be Decided

Is the landlord entitled to:

- 1) an order of possession; and
- 2) a monetary order for \$16,320?

Background and Evidence

While I have considered the documentary evidence and the testimony of the landlord, not all details of her submissions and arguments are reproduced here. The relevant and important aspects of the landlord claims and my findings are set out below.

The parties entered into a tenancy agreement starting January 1, 2013. The landlord testified that the tenant did not sign the written agreement she provided him, so the tenancy agreement is an oral agreement. Monthly rent is \$2,720 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$1,100, which the landlord holds in trust for the tenant.

SM testified that the tenant did not pay rent for June 2021 when it was due. He posted a 10-day notice to end tenancy for non-payment of rent on the door of the rental unit on June 15, 2021 (the "**June 10 Day Notice**"). He testified that the tenant paid the arrears within five days.

SM testified that the tenant did not pay rent for July 2021. He posted a 10-day notice to end tenancy for non-payment of rent on the door of the rental unit on July 6, 2021 (the "**July 10 Day Notice**"). He testified that the tenant paid the arrears within five days.

SM testified that he served the tenant with a one month notice for cause on July 6, 2021 by posting it on the door of the rental unit (the "**One Month Notice**"). It specified an effective date of July 16, 2021. It listed the reason for ending the tenancy as:

1. tenant is repeatedly late paying rent; and
2. tenant or a person permitted on the property by the tenant has:
 - a. significantly interfered with or unreasonably disturbed another occupant or the landlord
 - b. seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The landlord provided the following details of cause on the One Month Notice:

The tenant is repeatedly late paying rent. Tenant has made threats to cause severe damage to the rental property. Canada post refuses to deliver to this address as the tenant has violent tendencies.

The tenant did not make an application to the Residential Tenancy Branch (the "RTB") to dispute the One Month Notice.

The landlord testified that the tenant has not paid any rent for August, September, October, or November 2021. She testified that the tenant continues to reside in the rental unit.

Analysis

1. 10 Day Notices

Section 46 of the Act permits a landlord to issue a 10-day notice to end tenancy for non-payment of rent. In part, it states:

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.

[...]

- (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.

The tenant paid the rental arrears in full within five days of receiving the June 10 Day Notice and the July 10 Day Notice. As such, per section 46(4)(a) of the Act, they are of no effect. These notices do not therefore form a basis on which the landlord may end the tenancy. I dismiss this portion of the application.

2. One Month Notice

Section 47 of the Act permits a landlord to issue a one month notice to end tenancy for cause. In part, it states:

Landlord's notice: cause

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

[...]

- (b) the tenant is repeatedly late paying rent;

[...]

- (d) the tenant or a person permitted on the residential property by the tenant has

- (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

[...]

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

- (4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

- (5) If a tenant who has received a notice under this section does not 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 by that date.

I find that the tenant was served with the One Month Notice on July 6, 2021 when SM posted it to the door of the rental unit. Per section 90 of the Act, I find that the One Month Notice was deemed served three days after it was posted (July 9, 2021). The

tenant did not dispute the One Month Notice within 10 days of it being served or at all. As such, the tenant is conclusively presumed to have accepted that the tenancy ended on the corrected effective date of the One Month Notice (July 19, 2021).

I have reviewed the One Month Notice and find that it complies with the section 52 form and content requirements. As such, I grant the landlord an order of possession effective two days after the landlord serves the tenant with a copy of this decision and the attached orders.

3. Monetary Order

I accept the landlord's testimony that the tenant has failed to pay any rent for August, September, October, or November 2021. I find that the tenant has occupied the rental unit for these months. I accept the landlord's testimony that monthly rent is currently \$2,720. As such, I find that the tenant is in arrears of \$10,880 (\$2,720 x 4 months). He must pay the landlord this amount in satisfaction of the amount owed.

As the tenant has paid the arrears owed for June and July 2021, the landlord is not entitled to a monetary order for those amounts.

Pursuant to section 72(2) of the Act, the landlord may retain the security deposit in partial satisfaction of this monetary order.

Conclusion

Pursuant to sections 67 and 72 of the Act, I order that the tenant pay the landlord \$9,780, representing the following:

Description	Amount
Rent Arrears (August to November 2021)	\$10,880.00
Security Deposit Credit	-\$1,100.00
Total	\$9,780.00

Pursuant to section 55 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlord within two days of being served with a copy of this decision and attached orders by the landlord.

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: November 16, 2021

Residential Tenancy Branch