



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing was convened by way of conference call. The Landlord filed an Application for Dispute Resolution on August 06, 2021 (the “Application”). The Landlord applied as follows:

- For an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 13, 2021 (the “Notice”)
- To recover unpaid rent
- For reimbursement for the filing fee

This was an adjourned direct request.

The Landlord and Tenant appeared at the hearing. The Landlord said at the outset of the hearing that they were going to call a witness during the hearing; however, the Landlord did not do so and I did not hear from a witness. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

The Landlord submitted evidence prior to the hearing. The Tenant did not submit evidence. The Tenant confirmed they received the hearing package and Landlord’s evidence and did not raise any issue with service.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence and oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession based on the Notice?
2. Is the Landlord entitled to recover unpaid rent?
3. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

An issue of jurisdiction arose at the hearing because the Landlord indicated on the Application that they have the same address as the Tenant. At the hearing, the Landlord and Tenant confirmed that the Tenant rents a room in the lower suite of a house owned by the Landlord and the Landlord lives in the upper suite of the house. The parties confirmed they do not share bathroom or kitchen facilities.

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started December 13, 2020 and is a month-to-month tenancy. Rent is \$600.00 per month due on the first day of each month. The Tenant paid a security deposit of \$300.00.

The Notice was submitted as evidence. The Notice does not include an effective date. I asked the parties for submissions on the lack of an effective date on the Notice. The Tenant stated that they are taking issue with the lack of an effective date and asked if this was the payment date. The Landlord stated that they missed the effective date on the Notice.

The parties agreed that \$600.00 in rent for November was outstanding at the time of the hearing. The Tenant stated that they do not have authority under the *Residential Tenancy Act* (the “Act”) to withhold November rent.

Analysis

I find the parties have a tenancy governed by the *Act* given their testimony that the Tenant rents a room in the lower suite of the house, the Landlord lives in the upper suite of the house and they do not share bathroom or kitchen facilities.

The Notice was issued pursuant to section 46 of the *Act*. Section 46(2) of the *Act* states:

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

Section 52 of the *Act* states:

52 In order to be effective, a notice to end a tenancy must be in writing and **must**

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,

... and

(e) when given by a landlord, be in the approved form.

(emphasis added)

The Notice does not include an effective date and therefore is not a valid notice. I acknowledge that section 68 of the *Act* allows an arbitrator to amend a notice to end tenancy. I decline to amend the Notice because I am not satisfied the Landlord has provided a compelling basis to do so. I decline to issue an Order of Possession based on the Notice and dismiss this request without leave to re-apply.

The Landlord is seeking to recover unpaid rent. Section 26 of the *Act* states:

26 (1) 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.

Based on the written tenancy agreement, I accept that the Tenant is required to pay \$600.00 in rent per month by the first day of each month.

Based on the testimony of the parties, I accept that the Tenant currently owes \$600.00 in rent for November of 2021.

I acknowledge that the Landlord sought August rent on the Application and that this has now been paid. However, rule 4.2 of the Rules allows for amendments of an application at the hearing “in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made”. I find these circumstances similar in that the Tenant knew the Landlord is seeking to recover unpaid rent and knew \$600.00 in rent for November is outstanding. I find it reasonable to amend the Application to consider November rent.

The Tenant acknowledged they do not have authority under the *Act* to withhold November rent and therefore I find the Tenant is required to pay November rent.

Given the Landlord was partially successful in the Application, I award them \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenant must pay the Landlord \$700.00 and the Landlord is issued a Monetary Order in this amount.

Conclusion

The Tenant must pay the Landlord \$700.00 and the Landlord is issued a Monetary Order in this amount. This Order must be served on the Tenant. If the Tenant fails to comply with this Order, it may be filed in the Small Claims division of the Provincial Court and enforced as an order of that court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: November 26, 2021

Residential Tenancy Branch