



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FFL

Introduction

On July 28, 2021, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for an order of possession; for a monetary order for unpaid rent or utilities; and to recover the cost of the filing fee. The matter was set for a conference call hearing.

The Landlord attended the teleconference hearing; however, the Tenant did not. The Landlord provided affirmed testimony that the Tenant was served the Notice of Dispute Resolution Proceeding using registered mail sent to the dispute address on August 13, 2021.

Based on the Landlords affirmed testimony, I find that the Tenant has been served with the Notice of Dispute Resolution Proceeding in accordance with sections 89 and 90 of the *Act*. The Notice is deemed to have been served on August 18, 2021, five days after it was sent. The hearing proceeded.

The Landlord was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Landlord testified that the Tenant vacated the rental unit about three weeks ago.

Issues to be Decided

- Is the Landlord entitled to an order of possession due to unpaid rent?
- Is the Landlord entitled to a monetary order to recover unpaid rent?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord testified that the tenancy began in 2011 and is on a month-to-month basis. Rent in the amount of \$800.00 is to be paid to the Landlord by the first day of each month.

The Landlord testified that the Tenant did not pay any rent owing under the tenancy agreement for the months of June 2021 and July 2021.

The Landlord testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 5, 2021, ("the 10 Day Notice"). The Landlord testified that the Tenant was served the Notice by posting it on his door on July 5, 2021. The Landlord provided a copy of the 10 Day Notice.

The 10 Day Notice indicates that the Tenant has failed to pay rent in the amount of \$1,600.00. The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

There is no evidence before me that the Tenant made an application to dispute the 10 Day Notice.

The Landlord testified that the Tenant did not pay the rent within 5 days of receiving the 10 Day Notice and has not paid any rent since the 10 Day Notice was issued.

The Landlord testified that the Tenant owes rent for the following months:

- June 2021, in the amount of \$800.00
- July 2021, in the amount of \$800.00
- August 2021, in the amount of \$800.00
- September 2021, in the amount of \$800.00
- October 2021, in the amount of \$800.00
- November 2021, in the amount of \$800.00

The Landlord requested to amend the application to include the additional four months of unpaid rent.

The Landlord seeks an order of possession for the rental unit and a monetary order for unpaid rent in the amount of \$4,800.00.

Analysis

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I find that the Tenant received the 10 Day Notice and did not pay all the rent owing under the tenancy agreement for June and July 2021 within five days of

receiving the 10 Day Notice, and did not apply to dispute the Notice, and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy has ended.

I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective two days after service on the Tenant. It appears that the Tenant has vacated the unit and the Landlord may not need to serve the order of possession. However, this order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

I find that it is reasonable to permit the Landlord to amend the application for an additional four months of unpaid rent. The Tenant is aware that rent must be paid each month and he continued to live in the rental unit without paying rent until early November 2021. I find that the Tenant owes the Landlord \$4,800.00 for unpaid rent.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I find that the Landlord has established a total monetary claim of \$4,900.00 comprised of \$4,800.00 in unpaid rent for the above-mentioned months and the \$100.00 fee paid by the Landlord for this hearing.

I grant the Landlord a monetary order in the amount of \$4,900.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Conclusion

The Tenant failed to pay the rent due under the tenancy agreement and did not file to dispute the 10 Day Notice. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice.

The Landlord is granted an order of possession if needed, effective 2 days after service on the Tenant and I grant a monetary order for the unpaid rent and the cost of the filing fee in the amount of \$4,900.00.

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: December 1, 2021

Residential Tenancy Branch