



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

On May 9, 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:

On the second page of the Proof of Service Notice to End Tenancy there is no signature of a witness, or a signature of the person who received the 10 Day Notice, to confirm service of the 10 Day Notice to the tenant.

I find I am not able to confirm service of the 10 Day Notice to the tenant, which is a requirement of the Direct Request Proceeding, and 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 tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:30 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. The landlord HH 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 she sent the notice of reconvened hearing package and the interim decision to the tenant via registered mail and email on September 4, 2021. The registered mail was sent to the tenant after the tenant had vacated the rental unit on August 31, 2021 and the landlord was not provided with the tenant's forwarding address. As such I find the service by registered mail to be insufficient.

The landlord testified she and the tenant corresponded by email regarding the tenancy on a regular basis. The landlord testified that the email address used by the tenant is the one shown on the notice of dispute resolution proceedings. As an example of an email sent by the tenant, the landlord read back the contents of an email sent to the landlord on August 21, 2021 at 2:50 p.m. Excerpt below:

Subject: electrical.

"I just want to confirm with you that you do not want to cover the cost of new chandelier that replaced the defective chandelier and that you do not want to cover the cost of upgraded switches..."

Based on this evidence, I am satisfied the parties have exchanged email addresses for service in accordance with section 43 of the Residential Tenancy Regulations and the Notice of Dispute Resolution Proceedings is deemed sufficiently served on September 7, 2021, three days after it was sent by email in accordance with sections 71 and 90 of the Act.

This hearing was held in the absence of the tenant pursuant to Rule 7.3 of the Residential Tenancy Branch Rules of Procedure.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the Act?

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the Act?

Are the landlords entitled to recover the filing fee for this application pursuant to section 72 of the Act?

Background and Evidence

The landlords submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlords and the tenant on November 3, 2020, indicating a monthly rent of \$2,350.00, due on the first day of each month for a tenancy commencing on November 1, 2020
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated July 11, 2021, for \$6,318.75 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 July 21, 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 tenant at 5:30 pm on July 11, 2021
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy

The landlord testified that the tenant occupied the upper unit on a house with an upper and lower unit. Some time after the tenancy began the landlord and the tenant entered into a contract whereby the tenant agreed to act as a property manager for the landlord regarding the lower unit. In exchange for 12 percent of the lower unit's monthly rent, the tenant would find tenants, screen applicants, collect rent and forward it to the landlord.

The landlord submits that rent for the lower unit is \$1,850.00 per month and the tenant was obligated to forward 88 percent of the rent for the lower unit to the landlord each month, or \$1,618.75. The landlord submits that there is no tenancy agreement regarding the lower unit between the tenant and herself, but that the contract between them is a property management agreement. The property management contract was not supplied as evidence for this hearing.

The landlord testified that the tenant failed to pay his rent for the months of June and July, 2021, a sum of \$4,700.00. The landlord testified the tenant is also responsible for paying her \$1,618.75, representing the July rent for the lower unit pursuant to the property management agreement between the tenant and herself.

The landlord provided affirmed testimony that she personally served the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent/Utilities on July 11, 2021 at 5:30 p.m. A neighbour of the tenant witnessed the service however that person was not called as a witness for this hearing. The landlord testified that subsequent to serving the notice, the same neighbour told her the tenant moved out on August 31, 2021. On September 1, 2021, the landlord went to the unit and confirmed the tenant had vacated the rental unit. The landlord seeks to recover rent for the month of August 2021 in addition to the rental arrears for June and July as shown on the notice to end tenancy.

Analysis

The landlord has provided undisputed testimony that the tenant vacated the rental unit on August 31, 2021. As such, I order that the tenancy ended on that day pursuant to section 44(1)(d). Consequently, I dismiss the landlord's application for an Order of Possession pursuant to section 62(4) of the *Act*.

The landlord seeks a monetary order for unpaid rent from June 1, 2021 to August 31, 2021. Based on the tenancy agreement and the undisputed testimony of the landlord, I find that the tenant was obligated to pay \$2,350.00 per month for rent and failed to do so for each of those months.

I find the tenant would reasonably expect that the landlord would seek compensation for August rent, since he didn't vacate the rental unit and failed to pay rent for the month of August. 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 for August rent. I award the landlord [\$2,350.00 x 3 = \$7,050.00].

The landlord seeks compensation from the tenant for the tenant's failure to remit 88 percent of the rent for the lower unit of the house in accordance with a property management agreement entered into between the parties.

Section 62(b) allows the director to determine any matters related to disputes that arise under the Residential Tenancy *Act* or a tenancy agreement. Section 1 defines a tenancy agreement and rent as follows:

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

"rent" means money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit, for the use of common areas and for services or facilities, but does not include any of the following:

(a) a security deposit;

(b) a pet damage deposit;

(c) a fee prescribed under section 97 (2) (k) [regulations in relation to fees];

I do not find the nature of the contract between the parties whereby the tenant acts as a property manager on behalf of the landlord by finding tenants for the lower unit, collects rent from the lower unit tenant and retains a 12 percent fee falls under the definition of a tenancy agreement. The nature of the relationship is not one of a landlord/tenant, but one of a property manager and client. As such, I find this portion of the dispute does not arise under the Residential Tenancy *Act* or a tenancy agreement. Pursuant to section 62(1)(b), I find the director lacks the jurisdiction to make any order respecting the landlord's application to be compensated by the tenant for his failure to remit funds from the lower unit occupant.

The filing fee for the landlord's application shall be recovered pursuant to section 72 of the *Act*.

Conclusion

The tenancy has ended pursuant to section 44(1)(d). The landlord will not be issued an Order of Possession.

The landlord is entitled to a monetary order in the amount of \$7,150.00, inclusive of the filing fee pursuant to section 67 of the *Act*.

Pursuant to section 62(1)(b), the director does not have the jurisdiction to award the landlord with compensation for the tenant's alleged to remit funds to the landlord in his capacity as a property manager.

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 06, 2021

Residential Tenancy Branch