



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

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;
- a monetary order for unpaid rent in the amount of \$3194.50 pursuant to section 67;
- 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 9:46 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlord 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 and I were the only ones who had called into this teleconference.

The landlord testified she served the tenant with the notice of dispute resolution form and supporting evidence package via registered mail on January 5, 2022. The landlord provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. I find that the tenant was deemed served with this package on January 10, 2022, five days after the landlord sent the documents by Registered Mail, in accordance with sections 88, 89, and 90 of the Act.

At the outset, I advised the landlord of rule 6.11 of the Rules of Procedure (the "**Rules**"), which prohibits participants from recording the hearing. The landlord confirmed that they were not recording the hearing. I also advised the parties that pursuant to Rule 7.4, I would only consider written or documentary evidence that was directed to me in this hearing.

Preliminary Issue # 1: Address discrepancy

The landlord initially applied for an *ex parte*, Direct Request Proceeding. Review of the documentary evidence found a discrepancy in the tenant's address that raised a question that can only be addressed through a participatory hearing. The matter was referred to arbitration.

The landlord explained the address discrepancy. The alphabet designation that was attached to the unit number is used for internal purposes only, for example, unit #100X would refer to unit #100 in building X. The mailing address is the address sans the alphabet designation, for example, #100- 10000 100th Street.

The landlord's testimony explained the discrepancy. Based on the information presented, I am satisfied that all documents were served to the tenant's correct address in accordance with s. 88, 89, and 90 of the Act.

Preliminary Issue #2: Predictable Amendments

Residential Policy Guideline #23 "Amending an Application for Dispute Resolution" provides, "*In accordance with rule 4.2 (Amending an application at the hearing), when the amount of rent owing has increased since the time the application initially was filed, or in other circumstances that can reasonably be anticipated, the application may be amended through an oral request at the hearing*".

The landlord requested an amendment to the application to reflect the outstanding rent accrued since the notice was issued. The landlord requested an amendment from \$1100.00 to \$3175.00. I have amended the application to reflect rent arrears in the amount of \$3175.00.

Issues to be Decided

Is the landlord entitled to:

- 1) an order of possession;
- 2) a monetary order for outstanding rent in the amount of \$3175.00;
- 3) recover the filing fee;
- 4) retain the security deposit in partial satisfaction of the monetary orders made?

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's claims and my findings are set out below.

The parties entered into a written month to month tenancy agreement starting May 1, 2019. Monthly rent is \$1300.00 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$650.00. The landlord still retains this deposit, in trust.

The landlord testified that since the tenancy began, the tenant has always been in arrears with her rent payment. The landlord testified that there is an outstanding balance of \$3175.00 owed in back rent. The landlord provided the payments made and the dates of the payments. The calculation of the amounts provided are provided below and confirm an outstanding balance of \$3175.00.

MONTH/DATE PD	AMOUNT PAID	OWED	BALANCE
October 21, 2021	\$1600.00	\$100.00(Sept) + \$1300.00= \$1400.00 \$1600.00- \$1400.00= \$200.00	Credit of \$200.00
November 22, 2021	\$525.00 + \$200.00= \$725.00	\$1300.00 - \$725.00= \$575.00	\$575.00
December 1, 2021	\$0	\$1300.00	\$1875.00
January 1, 2022	\$0	\$1300.00	\$3175.00

The landlord testified that a number of different payment plans were put in place to help the tenant pay the rent on time; however, the tenant kept falling behind in rent payments.

Analysis

The landlord applied for an order of possession, a monetary order for unpaid rent, and return of the filing fee.

Before an application can be considered on its merits, it must be determined if the Notice meets the requirements under the *Act*.

I reviewed the 10 Day Notice to End Tenancy to determine it conforms to the form and content requirements pursuant to s. 52 of the *Act*, viz., it is signed and dated by the landlord, gives the address of the rental unit, states the correct effective date, states the grounds for the notice, and is on the approved form. I find that the Notice complies with S. 52 of the *Act*.

Section 47(5) of the *Act* stipulates that a tenant is **conclusively presumed** to have accepted that a tenancy ends on the effective date of a notice received pursuant to s. 47 of the *Act* and that the tenant must vacate the rental unit by that date **unless the tenant pays the rent or disputes the notice within five (5) days of receiving the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.**

The 10 Day Notice was affixed to the tenant's door on November 2, 2021, at 3:30 a.m. and is deemed served on November 5, 2021. The tenant had up to and including November 10, 2021, to either pay the rent or file for dispute resolution. The "move out" date was November 15, 2021. The tenant neither paid the rent nor filed for dispute resolution. I, therefore, find that the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date, November 15, 2021, as found on the 10 Day Notice to End Tenancy.

I find that the tenant owes the landlord partial rent for November 2021, full rent for December 2021, and January totaling \$3175.00.

Pursuant to section 72(1) of the *Act*, as the landlord has been successful in the application, she may recover the \$100.00 filing fee from the tenant's security deposit.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$650.00 in partial satisfaction of monies owed.

As the 10 Day Notice complies with s. 52 of the *Act*, pursuant to s. 67 of the *Act*, I grant a monetary order for unpaid rent in the amount of \$2625.00 as calculated below.

$$\begin{array}{r} \$3175.00 \text{ (arrears)} + \$100.00 \text{ (filing fee)} - \$650.00 \text{ (security deposit)} \\ \hline \mathbf{\$2625.00} \end{array}$$

I find the tenancy ends in accordance with the 10-Day Notice and the landlord is entitled to an Order of Possession pursuant to s. 55. The tenant has been overholding since November 15, 2021, and thus issue an Order of Possession effective two (2) days after service.

Conclusion

Pursuant to section 67, and 72 of the Act, I order that the **TENANT**, MICHELLE MAGGS, pay the **LANDLORD**, CAPREIT LIMITED PARTNERSHIP, \$2625.00 representing the following:

\$3175.00 (arrears) + \$100.00 (filing fee) - \$650.00 (security deposit)
\$2625.00

Pursuant to section 55 of the Act, I order that the **TENANT**, MICHELLE MAGGS, deliver vacant possession of the rental unit to the landlords within two (2) days of being served with a copy of this decision and attached order(s) 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: January 31, 2022

Residential Tenancy Branch