



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 matter proceeded by way of an ex parte Direct Request Proceeding, pursuant to section 55(4) of the Residential Tenancy Act (the Act), and dealt with an Application for Dispute Resolution by the landlord to obtain an order of possession based on unpaid rent, to obtain monetary compensation for unpaid rent, and to recover the filing fee paid for the application.

On September 14, 2021 the landlord's application was considered and the Adjudicator determined that this matter should be sent to a participatory hearing. The interim decision should be read in conjunction with this decision. The interim decision made finds that the tenants were duly served with the landlord's application in accordance the Act.

Only the landlord's agent appeared. The landlord's agent testified that they complied with the interim decision of September 14, 2021 and served the tenants by registered mail sent on September 15, 2021. The agent stated that the tenants did not pickup the packages and they were returned to the sender.

I find the tenants were deemed served on September 20, 2021, five days after they were sent. The tenants are cautioned that refusal or neglect to pickup the Canada Post packages does not override the deemed service provisions of the Act. Section 5 of the Act states any attempt to avoid the Act has no effect.

At the outset of the hearing the landlord's indicated that the tenants are currently up to date with their rent and all rent has been accepted for use and occupancy only. The agent stated they are seeking an order of possession and the cost to file this application.

Issue to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Background and Evidence

The landlord's agent testified that they served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, issued on August 2, 2021 (the "Notice") by posting to the door at 4:45pm that day. The agent stated that the tenants were home as you could hear them in the rental unit; however, they would not come to the door. Filed in evidence is a copy of the Notice, which complies with section 52 of the Act.

The landlord's agent testified that they later spoke to the female tenant and she informed that they did not have the money to pay the balance owed in the Notice, which was \$600.00.

The landlord's agent testified that the tenants did not pay the outstanding rent within five (5) days and did not dispute the Notice. The agent stated the tenants paid the outstanding rent of \$600.00 on August 20, 2021 and they issued a receipt for use an occupancy and for subsequent rent paid. The landlord seeks an order of possession.

Analysis

Based on the above, the testimony, and evidence, and on a balance of probabilities, I find as follows:

I find that the tenants were deemed served with Notice on August 5, 2021, by posting to the door on August 2, 2021. The Notice informed the tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the tenants had five days to dispute the Notice.

The tenants did not pay the outstanding rent within five (5) days, as it was paid on August 20, 2021. The tenants did not apply to dispute the notice and are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice. I find the tenancy legally ended on August 15, 2021, as the date of August 13, 2021 in the Notice automatically corrected based on the date it was deemed served.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act. As the landlord has accepted occupancy rent for January 2022, I find it reasonable that the effective date that the tenants must vacate the rental be extended to January 31, 2022. A copy of this order must be served upon the tenants. This order may be filed in the Supreme Court and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

As the landlord was successful with their application, I find the landlord is entitled to recover the cost of the filing fee. I authorize the landlord to retain \$100.00 from the tenants' security deposit in full satisfaction of this award.

Conclusion

The tenants failed to pay rent within 5 days after receiving the Notice and did not file to dispute the notice to end tenancy. The tenants are presumed under the law to have accepted that the tenancy ended on the effective date of the notice to end tenancy.

The landlord is granted an order of possession. I authorize the landlord to keep \$100.00 from the tenants security deposit to recover the cost of the filing fee.

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 13, 2022

Residential Tenancy Branch