



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPU-DR, MNU-DR, FFL

Introduction

This hearing convened as a result of a Landlords' Application for Dispute Resolution, filed on September 3, 2021, wherein they sought an Order of Possession and monetary compensation based on an undisputed 10 Day Notice to End Tenancy for Unpaid Rent and Utilities issued on August 1, 2021 (the "Notice") as well as recovery of the filing fee.

The Landlords originally applied for relief pursuant to the Direct Request Procedure; that application was adjourned to a participatory hearing which was scheduled for teleconference before me at 11:00 a.m. on January 21, 2022. Only the Landlords called into the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 11:21 a.m. Additionally, 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 Landlords and I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlords' hearing package. The Landlord B.M. testified that they served the Tenant with the Notice of Hearing and the Application on September 23, 2021 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of September 28, 2021 and I proceeded with the hearing in their absence.

The Landlords were cautioned that recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. They confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlords' submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the Landlords and relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Landlords entitled to an Order of Possession and monetary compensation based on the Notice?
2. Should the Landlords recover the filing fee paid for their Application?

Background and Evidence

This tenancy began December 1, 2020. Rent is \$750.00 per month in addition to 50% of utilities. The Tenant also paid a \$375.00 security deposit.

The Tenant failed to pay his rent and utilities for June, July and August 1, 2021 following which the Landlords issued the Notice. The Landlords also made written demands of

the Tenant to pay the utilities and the Tenant failed to pay. This was confirmed by documentary evidence filed by the Landlords.

The Landlords served the Notice on the Tenant by posting the Notice to the rental unit door on August 10, 2021. The Notice informed the Tenant that he had five days in which to apply to dispute the Notice, or to pay the outstanding amount, which at that time was \$2,250.00 for rent and \$213.74 for utilities. The Landlord testified that the Tenant failed to pay the outstanding amounts and failed to apply for dispute resolution. The Landlord further testified that as of the date of the hearing the sum of \$5,950.00 was outstanding for rent and \$791.17 for utilities for a total of \$6,741.17.

Analysis

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

The Tenant has not paid the outstanding rent 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 ended on the effective date of the Notice.

Under section 26 of the *Act*, the Tenant must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the *Act*, unless the Tenant has some authority under the *Act* to not pay rent. In this situation the Tenant had no such authority to not pay rent. I also accept the Landlords' evidence and submissions that the Tenant failed to pay the utilities as required by the tenancy agreement.

I therefore find that the Landlords are entitled to an order of possession effective **two days** after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

I find that the Landlords have established a total monetary claim of \$6,841.17 comprised of the following:

Unpaid rent	\$5,950.00
Unpaid utilities	\$791.17
Filing fee	\$100.00
Total	\$6,841.17

Pursuant to sections 38 and 72 of the *Act*, I authorize the Landlords to retain the Tenant's security deposit of \$375.00 in partial satisfaction of the claim and I grant the Landlords a Monetary Order under section 67 for the balance due of **\$6,466.17** . This Order may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

Conclusion

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

The Landlords are granted an Order of Possession, may keep the security deposit in partial satisfaction of the claim, and are granted a monetary order for the balance due.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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 24, 2022

Residential Tenancy Branch