



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CANADIAN GENERAL PROPERTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR-DR, OPR-DR, FFL

Introduction

The landlord seeks an order of possession based on an undisputed 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) and a monetary order for unpaid rent. In addition, the landlord seeks to recover the cost of the application filing fee.

Preliminary Issue: Service

The landlord attended the hearing on February 28, 2022 at 9:30 AM, but the respondent tenant did not. In such cases where a respondent does not attend, I must be satisfied that the respondent was properly served with the Notice of Dispute Resolution Proceeding. Such service must comply with the Act and the Residential Tenancy Branch’s *Rules of Procedure*, and there must be evidence to support a finding that such service in fact occurred.

The landlord testified under oath that she served the Notice of Dispute Resolution Proceeding by registered mail, which is a permitted method of service under section 89 of the Act. The landlord later served an updated package of material to the tenant on February 10, 2022. The landlord submitted into evidence documentary proof consisting of a Canada Post registered mail receipt and a registered mail tracking number proving that the tenant was served by registered mail. Canada Post’s track a package website indicated that the package was accepted by the tenant on February 15, 2022. A “verbal signature” was provided.

Given the evidence before me, it is my finding that the tenant was correctly served with the Notice of Dispute Resolution Proceeding and documentary evidence necessary for him to participate fully in these proceedings.

Issues

1. Is the landlord entitled to an order of possession?
2. Is the landlord entitled to a monetary order for unpaid rent?
3. Is the landlord entitled to recover the cost of the application filing fee?

Background, Evidence, and Facts

Relevant oral and documentary evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only the evidence needed to explain the decision is reproduced below.

The tenancy began on August 1, 2019. Monthly rent of \$550.00 is due on the first day of the month. Rent was increased (in compliance with the Act) to \$558.00 on January 1, 2022. The tenant paid a \$275.00 security deposit which the landlord currently holds in trust pending the outcome of this application. There is no written tenancy agreement in respect of this tenancy.

On October 2, 2021 the landlord served on the tenant the Notice by posting it on the door of the rental unit. A copy of the Notice was submitted into evidence. The Notice indicated that rent in the amount of \$550.00 was due on October 1, 2021. The tenant did not dispute the Notice and did not pay the amount of rent outstanding.

Additional 10 Day Notices to End Tenancy have since been served on the tenant, all to no avail. The tenant has “not paid a single penny” of the rent, the landlord remarked. As of February 28, 2022, the tenant owes rent arrears in the amount of \$2,791.00.

Submitted into documentary evidence included copies of the ten-day notices, various proofs of service, rent increase notices, and the revised monetary order worksheet.

Analysis

Rent must be paid when it is due under a tenancy agreement ([section 26\(1\)](#) of the Act). A landlord may issue a notice to end the tenancy under [section 46](#) of the Act if a tenant does not pay rent on time and in full.

If a tenant does not pay the amount of rent owing, or if they do not dispute the notice within 5 days, they are presumed to have accepted the notice and must vacate by the effective end of tenancy date indicated on the notice ([section 46\(5\)](#) of the Act).

A landlord may seek an order of possession and a monetary order if a tenant has not disputed the notice and the time for filing an application to dispute that notice has passed ([sections 55\(2\)\(b\) and 55\(4\)](#) of the Act).

In this dispute, the Notice was served on October 2, 2022 for the tenant's failure to pay rent. He failed to pay the rent or dispute the Notice within five days. Thus, it is my finding that the tenant is presumed to have accepted the Notice and is required to vacate. Last, it is noted that the Notice complies with section 52 of the Act in form and content.

Pursuant to section 55(2)(b) of the Act the landlord is hereby entitled to an order of possession. A copy of this order is issued in conjunction with this decision, to the landlord. As confirmed with the landlord during the hearing, the landlord must serve a copy of the order on the tenant. Upon receiving, deemed or otherwise, the order of possession the tenant must vacate the rental unit within 2 days.

Further, after taking into consideration all of the undisputed evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has also met the onus of proving their claim for compensation for unpaid rent in the amount of \$2,791.00.

As the landlord succeeded in their application, they are entitled to \$100.00 in compensation to offset the cost of the application filing fee, pursuant to section 72 of the Act. The total amount awarded is thus \$2,891.00.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if "after the end of the tenancy, the director orders that the landlord may retain the amount."

As the tenancy effectively ended on October 14, 2021 (the effective end of tenancy date on the undisputed Notice), the tenancy has ended, and the landlord is authorized to retain the tenant's security deposit of \$275.00 in partial satisfaction of the above-noted award.

A monetary order in the amount of \$2,616.00 is issued in conjunction with this decision, to the landlord. As with the order of possession, the landlord must serve a copy of the monetary order on the tenant.

Conclusion

The landlord's application is granted.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: February 28, 2022

Residential Tenancy Branch