



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

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute. On November 15, 2021, the Landlord applied for:

- an order of possession, having issued a 10 Day Notice for Unpaid Rent, dated November 6, 2021 (the 10 Day Notice);
- a monetary order for unpaid rent, noting that the Landlord holds the security deposit; and
- the filing fee.

The hearing started promptly at 11:00 a.m., and only the Landlord was present. The Landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; she was made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The Landlord testified she served the Notice of Dispute Resolution Proceeding and a portion of her evidence on the Tenant on November 19, 2021 by registered mail, and provided a tracking number, as noted on the cover page of this decision. Having checked the tracking number, I find the Landlord's documents served on the Tenant on November 19, 2021, in accordance with section 89 of the Act, and deem the documents received by the Tenant on November 24, 2021, in accordance with section 90 of the Act.

The Landlord testified she served a second evidence package on the Tenant on February 14, 2022 by registered mail, and provided a tracking number, as noted on the cover page of this decision. Having checked the tracking number, I find the Landlord's documents served on the Tenant on February 14, 2022, and deem the documents received by the Tenant on February 19, 2021, in accordance with section 90 of the Act.

Rule 3.14 of the Residential Tenancy Branch Rules of Procedure states that documentary evidence that is intended to be relied on at the hearing must be received by the respondent not less than 14 days before the hearing. As the Landlord's February evidence is deemed received by the Tenant on February 19, 2021, nine days before the hearing, I will not be considering any of it in my decision.

Issues to be Decided

- 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 the filing fee?

Background and Evidence

The Landlord testified that her sibling, the previous landlord, died in October 2021, and that the current Landlord then took over.

The Landlord testified that she is not sure when the tenancy began, and does not know if the Tenant paid a security deposit. The Landlord testified she has not been able to find a copy of the tenancy agreement in her sibling's documents, and that the Tenant refused to provide her with a copy. The Landlord testified that rent is \$550.00 and is due on the first of the month. The Landlord testified that she knows rent is \$550.00 a month from looking at her sibling's bank statements, and because in early November 2021 the Tenant told her so.

A copy of the 10 Day Notice was submitted as evidence. The Landlord testified that the 10 Day Notice was served on the Tenant by posting it to the door on November 6, 2021, and provided a proof of service form signed by a witness. The Landlord testified that when she spoke with the Tenant on November 14, 2021, he confirmed he had received the 10 Day Notice.

The 10 Day Notice is dated by the Landlord, gives the address of the rental unit, states the effective date, states the reason for ending the tenancy, and is in the approved form. The Notice is not signed by the Landlord. The 10 Day Notice indicates the tenancy is ending because the Tenant failed to pay rent in the amount of \$550.00, due November 1, 2021.

The Landlord submitted as evidence a copy of a Direct Request Worksheet indicating that rent in the amount of \$550.00 is owing for November 2021.

The Landlord testified that the Tenant currently owes rent as follows:

Month	Monthly Rent	Rent Paid	Monthly Balance Owing
November 2021	\$550.00	\$0.00	\$550.00
December 2021	\$550.00	\$550.00	\$0.00
January 2022	\$550.00	\$250.00	\$300.00
February 2022	\$550.00	\$0.00	\$550.00
Total rent owing			\$1,400.00

Analysis

Pursuant to section 46(1) of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. A notice under this section must comply with the form and content provisions of section 52.

Sections 46(4) and (5) of the Act state:

- (4) Within 5 days after receiving a notice under this section, the tenant may
 - (a) pay the overdue rent, in which case the notice has no effect, or
 - (b) dispute the notice by making an application for dispute resolution.
- (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant
 - (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
 - (b) must vacate the rental unit to which the notice relates by that date.

Based on the Landlord's affirmed undisputed testimony, I find the Landlord served the 10 Day Notice on the Tenant on November 6, 2021 in accordance with section 88 of the Act, and deem it received by the Tenant on November 9, 2021, in accordance with section 90.

Although the Landlord did not sign the 10 Day Notice, I find the Landlord's name listed on the Notice sufficient for meeting the requirement of 52(a), which states the notice must be signed and dated by the landlord. Section 68 of the Act allows an arbitrator to amend a notice as follows:

Director's orders: notice to end tenancy

68 (1) If a notice to end a tenancy does not comply with section 52 [*form and content of notice to end tenancy*], the director may amend the notice if satisfied that

- (a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and
- (b) in the circumstances, it is reasonable to amend the notice.

I amend the 10 Day Notice as, based on the affirmed testimony of the Landlord, I am satisfied that the Tenant knew the Notice was from her, and in the circumstance I find it is reasonable to amend the Notice.

I find that the Tenant did not file an application for dispute resolution within 5 days of November 9, 2021, the timeline granted under section 46(4) of the Act. Accordingly, I find that the Tenant is conclusively presumed under section 46(5) to have accepted that the tenancy ended on the effective date of the 10 Day Notice, December 31, 2021, and must vacate the rental unit.

Therefore, I find the Landlord is entitled to an order of possession.

Based on the Landlord's undisputed affirmed testimony, I find the Tenant owes unpaid rent in the amount of \$1,400.00, which he must pay the Landlord, pursuant to section 55(4) of the Act.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord is successful in her application, I order the Tenant to pay the \$100.00 filing fee the Landlord paid to apply for dispute resolution.

I find the Landlord is entitled to a total monetary award of \$1,500.00, comprised of \$1,400.00 in outstanding rent and \$100.00 for the filing fee.

Conclusion

The Landlord's application is granted.

The Landlord is granted an order of possession which will be effective two days after it is served on the Tenant.

The Landlord is granted a monetary order in the amount of \$1,500.00.

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: February 28, 2022

Residential Tenancy Branch