



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNRL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- An order of possession pursuant to section 55; and
- A monetary award for unpaid rent pursuant to section 67.

The tenant did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The landlord attended, assisted by a family member, and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord was made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and they testified that they were not making any recordings.

The landlord testified that they served the tenant with the notice of hearing and all materials personally on January 21, 2022. Based on the undisputed testimony I find the tenant was served with the materials on January 21, 2022 in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing the landlord requested to amend the amount of their monetary claim in their application saying that additional rent has come due. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure as additional rent coming due is reasonably foreseeable, I amend the landlord's application to increase their monetary claim to \$2,700.00.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award as claimed?

Background and Evidence

The landlord gave undisputed testimony regarding the following facts. This periodic tenancy began in April 2021. Monthly rent is \$750.00 payable on the first of each month. A security deposit of \$350.00 was collected at the start of the tenancy and is still held by the landlord. No written tenancy agreement was prepared for this tenancy.

The landlord claims that the tenant failed to pay full rent as required on November 1, 2021 and made partial payment of \$300.00 and no payment subsequently. The landlord issued a 10 Day Notice dated December 27, 2021 indicating a rental arrear of \$1,000.00 due on December 9, 2021 as the reason for the issuance of the notice. The landlord testified that they served the tenant with the 10 Day Notice personally on January 7, 2022. The landlord also submitted into evidence a 1 Month Notice dated November 9, 2021 which they say was personally served on the tenant on that date. The reason provided on the 1 Month Notice for the tenancy to end is that the tenant has been repeatedly late paying rent.

The landlord submits that as at, February 14, 2022, there is a rental arrear of \$2,700.00 and seeks a monetary award in that amount.

Analysis

Pursuant to section 13(1) of the *Act* a landlord must prepare a tenancy agreement in writing setting out the amount of rent payable and the date when rent is due.

In the present circumstance while the landlord testified that rent is due on the first of each month, their 10 Day Notice indicates rent was payable on December 9, 2021. I further note that the amount the landlord says was payable on December 9, 2021 is \$1,000.00 despite the rent being \$750.00 and confirming that the only payment received was \$300.00 on November 1, 2021. If the landlord's testimony is correct the total arrear as at December 9, 2021 would have been \$1,200.00. The landlord gave no explanation for the discrepancy, whether it arises from a typographic or arithmetic error on the

notice or incorrect information given in their earlier testimony. I note that the amount provided on the 10 Day Notice was amended to \$1,000.00 from an earlier illegible figure crossed out by the landlord so it is obvious that the notice was reviewed and corrected prior to its issuance.

I also note that the landlord did not issue a 10 Day Notice in November 2021 when the tenant failed to pay rent but waited over a month to first issue a notice on December 27, 2021. If rent was due on the first of the month it would be reasonable to expect that a notice would be issued promptly upon failure to receive payment.

Instead, the landlord issued a 1 Month Notice dated November 9, 2021. The landlord did not provide information on which previous months the rent was not paid on the date it was due. The landlord was questioned as to why they issued a 1 Month Notice instead of a 10 Day Notice in November 2021 but had no cogent explanation.

Based on the dearth of documentary materials and the landlord's testimony which is contradicted in their own evidence I am not satisfied, on a balance of probabilities, that there was a rental arrear giving rise to the issuance of the 10 Day Notice. I find little evidence that there is an enforceable tenancy agreement between the parties and, based on the inconsistent information of the landlord, I am uncertain of the terms of any such agreement.

I am not satisfied that there was a rental arrear giving rise to the issuance of the 10 Day Notice nor any repeated late payments giving rise to the issuance of the 1 Month Notice. I find insufficient evidence to show that there is an agreement between the parties requiring payment, the amount payable or the date when rent is due. I find that the landlord has not met their evidentiary onus for any portion of their claim and consequently dismiss the application.

Conclusion

The landlord's application is dismissed in its entirety without leave to reapply.

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 14, 2022

Residential Tenancy Branch