



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") for an order of possession for non-payment of rent pursuant to section 55.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 10:14 am in order to enable the tenant to call into the hearing scheduled to start at 9:30 am. The landlord's agent ("**ZZ**") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I used the teleconference system to confirm that ZZ and I were the only ones who had called into the hearing.

ZZ testified the landlord's property manager served that the tenant with the notice of dispute resolution package and supporting documentary evidence by posting them on the door of the rental unit on February 4, 2022. I find that the party was deemed served with these documents on February 7, 2022, three days after the party posted them, in accordance with sections 88, 89, and 90 of the Act.

Issues to be Decided

Is the landlord entitled to an order of possession?

Background and Evidence

While I have considered the documentary evidence and the testimony of ZZ, not all details of her submissions and arguments are reproduced here. The relevant and important aspects of ZZ's claims and my findings are set out below.

ZZ testified that the parties entered into a verbal tenancy agreement starting on January 1, 2022. Monthly rent is \$700 and is payable on the first of each month. The tenant was not required to pay a security or pet damage deposit to the landlord.

ZZ testified that in 2021, the tenant paid rent as follows:

Date	Owed	Paid	Balance
Jan-21	\$700	\$300	\$400
Feb-21	\$700	\$100	\$1,000
Mar-21	\$700	\$0	\$1,700
Apr-21	\$700	\$0	\$2,400
May-21	\$700	\$0	\$3,100
Jun-21	\$700	\$0	\$3,800
Jul-21	\$700	\$0	\$4,500
Aug-21	\$700	\$0	\$5,200
Sep-21	\$700	\$580	\$5,320
Oct-21	\$700	\$0	\$6,020
Nov-21	\$700	\$350	\$6,370
Dec-21	\$700	\$350	\$6,720

On December 2, 2021, a co-owner of the landlord served a 10 Day Notice to End Tenancy (the “**Notice**”) on the tenant in person. It stated that as of December 2, 2021, the tenant owed the landlord \$8,110. At the hearing, ZZ stated that this amount was incorrect and confirmed that the tenant owed \$6,720 at the time the Notice was issued.

The tenant did not dispute the Notice.

Analysis

I accept ZZ’s testimony that the tenant’s monthly rent was \$700 payable on the first of each month.

Based on ZZ’s testimony, I find that as the December 2, 2021, the tenant was \$6,720 in arrears, and not \$8,110 in arrears as the Notice indicated.

Section 46 of the Act states, in part:

Landlord’s notice: non-payment of rent

46(1) 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.

(2) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*].

[...]

(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.

The tenant did not dispute the Notice or pay the full balance of arrears listed within five days or at all. Ordinarily, this would cause the tenancy to end pursuant to section 46(5) of the Act. Before this section could apply, however, the landlord must demonstrate that the Notice complies with section 52 of the Act, which, in part, states:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must [...]

(e) when given by a landlord, be in the approved form.

Implicit in the requirement that a notice be in the approved form is that the approved form be filled out correctly. This extends to filling out the correct amount of arrears owing.

On ZZ's own evidence, the Notice was not filled out correctly. As such, I find that it fails to meet the section 52 form and content requirements. As such, I cancel the Notice and order that it is of no force or effect. Accordingly, I dismiss the landlord's application.

Conclusion

I dismiss the landlord's application, 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: March 29, 2022

Residential Tenancy Branch