



Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-PP, FFL

Introduction

This hearing was convened in response to applications by the landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows

- an Order of Possession for non-payment of rent pursuant to section 55 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*

Tenant E.M.L., her counsel M.T. and the landlord’s agent, R.L. attended the hearing by way of conference call. All parties were given a full opportunity to be heard, to present testimony, to make submissions and to call witnesses.

The parties confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11.

The tenants disputed receiving the landlord’s application for dispute but acknowledged receiving the landlord’s 10 Day Notice. The landlord testified that he sent individual copies of the application for dispute by way of Canada Post Registered Mail on December 13, 2021. Copies of the Registered Mail receipts were included in the evidentiary packages. Pursuant to sections 89, 89 & 90 of the *Act*, the tenants are deemed served with this evidence on December 18, 2021.

Counsel for the landlord explained a copy of their respondent evidence was slid under a door at the landlord’s business address. While service of documents to the address at which the person carries on business as a landlord are allowable pursuant to section 88(d) of the *Act*, I note they must be sent by ordinary or registered mail. There is no provision in the *Act* to slide documents under a door, further, counsel acknowledged they did not know if anyone was present in the office. I therefore decline to consider the tenants’ evidence.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?
Can the landlord recover the filing fee?

Background and Evidence

The parties provided conflicting testimony regarding the amount of monthly rent due. A copy of a fixed-term tenancy agreement running from April 1, 2020 through March 30, 2021 notes monthly rent of \$2,000.00. This agreement notes, “At the end of this time, the tenancy will continue on a month-to-month basis, or another fixed length of time, unless the tenant gives notice to end tenancy at least one clear month before the end of the term.” Counsel for the tenant referenced a previous fixed-term tenancy agreement running from March 1, 2018 to February 28, 2019 with monthly rent of \$2,700.00 and a security deposit of \$1,350.00 paid. This agreement too, notes a continuation of the tenancy as described above.

The landlord seeks an Order of Possession based on a 10 Day Notice for Unpaid rent dated December 3, 2021. This Notice states the tenants have failed to pay \$2,600.00 in unpaid rent due on December 1, 2021.

A copy of the Direct Request worksheet submitted by the landlord notes unpaid rent of \$16,500.00 as follows:

April 1, 2019 – unpaid rent \$1,500.00	
May 1, 2020 – unpaid rent \$1,500.00	
December 1, 2021 – unpaid rent \$13,500.00	Total = \$16,500.00

The landlord also supplied a statement marked “CIBC statement” which was a 3-page untranslated document containing a figure column.

The tenants disputed the landlord’s arguments surrounding unpaid rent. Specifically, the tenants took issue with the amount of rent due. Their understanding was that rent was \$2,000.00 per month versus the \$2,600.00 cited by the landlord. Further, the tenants argued that some rent concessions had been granted due financial hardships caused by the Covid-19 pandemic.

Analysis

Section 46(1) of the *Act* states as follows:

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.

The landlord argued that the tenant had failed to paid rent of \$2,600.00 for the month of December 2021, which in turn triggered his issuance of the 10 Day Notice. Further, the landlord submitted several documents including a Direct Request worksheet indicating unpaid rent of \$16,500.00, however, none of these figures on the Direct Request worksheet correspond with the \$2,600.00 figure cited in the notice.

A review of the tenancy agreement notes rent was \$2,000.00 per month. There is no indication that monthly rent has varied from this figure which was agreed to by the parties as part of fixed-term tenancy agreement running from April 1, 2020 through March 30, 2021.

Any rent increase must be done in conjunction with section 43 of the *Act*. I find no evidence indicating that the tenants agreed in writing to a rent increase of \$600.00 or that this amount was ordered by the director or calculated in accordance with the regulations.

I find no basis why rent would be \$2,600.00 per month, therefore I find no rent is outstanding. I find the tenants paid \$2,000.00 per month as directed by the terms of their tenancy agreement, rendering the 10 Day Notice issued December 3, 2021 invalid.

The landlord's application is dismissed. The landlord must bear the cost of his own filing fee.

Conclusion

The landlord's application is dismissed without leave to reapply. The 10 Day Notice issued December 3, 2021 is cancelled.

The landlord must bear the cost of their own filing fee.

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 25, 2022

Residential Tenancy Branch