



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR

Introduction

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

This matter was reconvened from an *ex parte*, direct request proceeding by way of an interim decision issued January 12, 2022.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:49 am in order to enable the tenant to call into the hearing scheduled to start at 9:30 am. The landlords 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 the landlords and I were the only ones who had called into the hearing.

Landlord GM testified he served that the tenant with the notice of reconvened hearing and a copy of the interim decision via registered mail on January 12, 2022. He provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. I find that the tenant is deemed served with these documents on January 17, 2022, five days after GM mailed them, per section 90 of the Act.

Preliminary Issue – Amendment of Application

At the outset of the hearing landlord GM confirmed that despite the tenant being significantly in arrears, the landlords were not seeking a monetary order. However he stated that the landlords didn't collect a security deposit at the outset of the tenancy, and that they would like to retain the deposit in partial satisfaction of the arrears owed.

Rule of Procedure 4.2 states:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for

Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

In light of the nature of the application (ending tenancy for nonpayment of rent) I find that an amendment for the landlord to retain the security deposit could have reasonably been anticipated by the tenant. As such, I amend the application to include a claim for the landlords to retain the security deposit.

Issues to be Decided

Are the landlords entitled to:

- 1) an order of possession; and
- 2) retain the security deposit?

Background and Evidence

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

GM testified that the tenant moved into the rental unit on January 1, 2012. The landlords and the tenant did not enter into a written tenancy agreement. At the time the tenant moved into the rental unit, the landlords were renting the rental unit to two other tenants ("FG" and "LG") as well. A signed copy of the tenancy agreement between FG, LG, and the landlords was entered into evidence. It indicated that their tenancy started March 1, 2011. Monthly rent was \$2,800. GM testified that FG and LG vacated the rental unit in or about May 2012 and the tenant has resided at the rental unit ever since, on the same terms as the tenancy agreement between FG, LG, and the landlords. GM testified that the tenant provided the landlords with a security deposit of \$1,200 when he moved in.

GM testified that the tenant failed to pay monthly rent for March, September, October, November, December 2021 and January, February, March, April 2022.

On November 1, 2021 the landlords personally served the tenant with the Notice. The Notice specified an effective date of November 13, 2021 and arrears of \$11,200. The tenant did not dispute the Notice.

GM testified that the tenant has not paid any of the arrears listed on the notice, or any of the arrears subsequently in curd. Despite this, he stated that the landlords are not seeking a monetary order, and only want to have the tenant removed from the rental unit so they can install a new tenant who will pay rent when it is due. He testified that the landlords are only seeking to keep the security deposit at this time.

Analysis

I accept GM's testimony in its entirety. I find that:

- there is a tenancy agreement between the tenant and the landlords which required the tenant to pay monthly rent of \$2,800.
- the tenant provided the landlords with a security deposit of \$1,200.
- the tenant failed to pay monthly rent for nine months (as alleged by the landlords) and is \$25,200 in arrears (\$2,800 x 9 months).
- the landlords served the tenant with the notice on November 1, 2021.

Section 46(5) states:

Landlord's notice: non-payment of rent

(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.

I find that the Notice meets the form and content requirements of section 52 of the Act.

As such, I find that the tenant is conclusively presumed to have accepted the tenancy ended on November 13, 2021. I grant the landlords in order of possession on the terms set out below.

The tenant is more than \$1,200 in rental arrears. Pursuant to section 65 of the Act, the landlords may retain the security deposit in partial satisfaction of the arrears owed to the landlords.

Conclusion

Pursuant to section 55 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlords within two days of being served with a copy of this decision and attached order by the landlords.

The landlords may retain the security deposit (\$1,200) in partial satisfaction of the rental arrears owed.

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: April 4, 2022