



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPC, OPR, MNRL-S**

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;
- a monetary order for damages and loss pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

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 was represented by their agent (the "landlord") who 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 evidence by registered mail sent on February 18, 2022. The landlord submitted a valid Canada Post tracking receipt as evidence of service. Based on the evidence I find that the tenant is deemed served with the landlord's materials on February 23, 2022, five days after mailing, in accordance with sections 88, 89 and 90 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 \$6,800.00.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession?

Are the landlords entitled to a monetary award as claimed?

Are the landlords entitled to recover the filing fee from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The landlord gave undisputed evidence regarding the following facts. The monthly rent for this periodic tenancy which began in June, 2019 is \$1,700.00 payable on the first of each month. A security deposit of \$800.00 was collected at the start of the tenancy and is still held by the landlord.

The landlord submits that the tenant has consistently failed to pay rent as required on the first of the month throughout the course of this tenancy and they issued a 1 Month Notice to End Tenancy for Cause on January 19, 2022. A copy of a 1 Month Notice was submitted into evidence. The notice is neither dated nor signed by the landlord. The landlord submits that they served the 1 Month Notice by email to the tenant.

The landlord submitted some text message exchanges with the tenant as evidence of late payment of rent throughout the tenancy.

Analysis

Section 47 of the *Act* provides that a landlord may end a tenancy by giving notice to the tenant in a manner that complies with section 52 [form and content of notice to end tenancy].

Section 88 of the Act and Regulation 43 provides the manner in which a document may be served on a party.

In the present case the landlord submits that the 1 Month Notice was served on the tenant by email but has provided no documentary evidence in support of service. Instead of providing a signed Proof of Service form the landlord has simply uploaded the same unsigned, undated 1 Month Notice twice.

Based on the paucity of evidence I am not satisfied that the tenant has been properly served with the 1 Month Notice in accordance with the Act or at all. Consequently, I dismiss the present application of the landlords.

While I have not made a determination on the substance of the 1 Month Notice, I will note that it is not signed or dated by the landlord in accordance with section 52(a).

Conclusion

The landlord's application is dismissed in its entirety with 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: May 12, 2022

Residential Tenancy Branch