



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, OPR-DR, MNR-DR

Introduction

The landlord seeks an order of possession and a monetary order based on an undisputed 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 55 of the *Residential Tenancy Act* ("Act"). They also seek to recover the cost of the filing fee.

The landlord filed a "direct request" application (under section 55(4) of the Act) on January 12, 2022. Due to a few discrepancies on the application, and within the supporting documentary evidence, the adjudicator ordered the application to be heard at a participatory hearing. A participatory hearing was held on May 5, 2022 at 9:30 AM.

Preliminary Issue: Naming of Parties

Attending the participatory hearing was the landlord. She testified under oath that one of the landlords as named on the tenancy agreement was her late father. The other named landlord was her brother, who is hard of hearing and incapable of managing the tenancy. The landlord affirmed under oath that she has legal authority to act as the landlord in this matter. Based on a review of the documentary evidence, including the Notice, I am satisfied based on this oral and documentary evidence that the landlord (A.L.) is the correctly named landlord.

Preliminary Issue: Non-Attendance of Tenant

The landlord testified under oath that she served the tenant with the Notice of Dispute Resolution Proceeding document by Canada Post registered mail. A copy of the receipt, dated February 11, 2022, was submitted into evidence. Canada Post's "track a package" website (<https://www.canadapost-postescanada.ca/track-reperage/en#/home>) indicates that the package was available for pick up (a "Final Notice" card was left at the tenant's address) on February 21, 2022. The package went unclaimed by the tenant and was ultimately returned to the landlord.

A party's failure to accept service of a legal document does not nullify or otherwise void service of that document. Nor does such a failure halt a legal proceeding. Thus, it is my finding that the tenant was properly served under the Act and the *Rules of Procedure* with the Notice of Dispute Resolution Proceeding and therefore had the opportunity to participate in the dispute resolution hearing.

Issues

1. Is the landlord entitled to an order of possession?
2. Is the landlord entitled to a monetary order?

Background and Evidence

The tenancy began in 2013. Monthly rent is \$1,700.00, due on the first day of the month. The tenant paid a \$450.00 security deposit which the landlord holds in trust pending this application. A copy of the written tenancy agreement was in evidence.

On December 4, 2021, the tenant was served in person with the Notice. A copy of the Notice was tendered into evidence. It indicates that rent arrears in the amount of \$4,192.00 was owing as of December 1, 2021. As of May 1, 2022, the rent arrears have grown to \$7,292.00. The tenant continues to occupy the rental unit and has not disputed the Notice.

Analysis

Section 55(2)(c) of the Act permits a landlord to request an order of possession when a notice to end the tenancy has been given, the tenant has not made an application to dispute the notice, and the time for making any such application has expired.

In this case, the landlord served the Notice in early December 2021 and the tenant did not dispute the Notice. (As an aside, I have reviewed the Notice and find that it complies with section 52 of the Act in respect of form and content.) Given the undisputed facts, I hereby grant the landlord an order of possession. A copy of the order of possession is issued in conjunction with this decision, to the landlord. The landlord must serve a copy of the order of possession on the tenant, and the tenant has two days to vacate the rental unit.

Section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent.

In this case, the tenant failed on multiple occasions to pay the full rent which is due on the first. Though some previous efforts to pay some of the rent occurred, the unpaid rent has now grown to \$7,292.00. Pursuant to section 55(1.1) of the Act, then, I hereby grant an order requiring the payment of the unpaid rent in the amount of \$7,292.00.

As the landlord was successful in this application, they are awarded \$100.00 to pay for the cost of the application filing fee, pursuant to section 72 of the Act. In total, the landlord is awarded \$7,392.00.

Section 38(4)(b) of the Act permits an arbitrator to authorize a landlord to retain a tenant's security deposit after the tenancy. As such, the landlord is ordered to retain the tenant's security deposit of \$450.00 in partial satisfaction of the amount awarded.

The balance of the award (\$6,942.00) is granted by way of a monetary order. A copy of this monetary order is issued in conjunction with this decision, to the landlord, and the landlord must serve a copy of the monetary order on the tenant.

Both the order of possession and the monetary order may be served on the tenant by any means of service permitted under [section 88](#) of the Act.

Conclusion

The landlord's application is **GRANTED**.

This decision is final and binding on the parties, and it is made on delegated authority under section 9.1(1) of the Act.

Dated: May 5, 2022

Residential Tenancy Branch