



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, FFL

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; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

This matter was reconvened from an *ex parte*, direct request proceeding by way of an interim decision issued April 4, 2022.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:18 am in order to enable the tenant to call into the hearing scheduled to start at 11:00 am. The landlord's manager ("**PB**") 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 PB and I were the only ones who had called into the hearing.

PB testified he served that the tenant with the notice of reconvened hearing, the April 4, 2021 interim decision, and the supporting evidence by posting them on the door of the rental unit on April 6, 2022. He submitted a video of him doing this. He testified that he served the same documents again on the tenant by giving them to the tenant's girlfriend on April 26, 2022. He submitted a video of this as well. I find that the tenant was deemed served with these documents on April 9, 2022, three days after PB posted them, in accordance with sections 88, 89, and 90 of the Act.

At the outset of the hearing, PB indicated that he would like to amend the landlord's application to include a claim for unpaid rent. However, for reasons discussed below, he withdrew this request for amendment at the end of the hearing. I explicitly make no

finding as to the amount of arrears owed by the tenant. The landlord is at liberty to make a subsequent application to recover unpaid rent.

Issues to be Decided

Is the landlord entitled to:

- 1) an order of possession; and
- 2) recover the filing fee.

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.

PB testified that the tenant moved into the rental unit prior to his tenure as manager, and prior to the current owner of the residential property acquiring it. PB testified he became manager of the residential property in December, 2021. The prior owner of the rental unit (which is a room in a motel) did not enter into a written tenancy agreement with the tenant. PB testified that he did not have any financial records from the prior owner relating to amounts of rent the tenant paid, or when the tenancy started. He advised me that the outgoing manager told him that the tenant's monthly rent was \$1,000 per month, but also alluded to the fact that the tenant paid \$1,300 a month at some point in the past. PB also testified that the tenant's girlfriend advised him that rent was "about \$1000 per month".

PB testified that the tenant has only paid \$150 of monthly rent (in December 2021) since he became manager of the residential property.

On February 4, 2022 the landlord served the tenant personally with a 10 day notice to end tenancy for non payment of rent (the "**Notice**"), which specified the tenant was in arrears \$2850 and listed an effective date of February 14, 2022.

The tenant did not dispute this Notice.

Analysis

Based on the sworn testimony of PB, I am satisfied that the tenant resides in the rental unit on a permanent basis. I accept that an oral tenancy agreement exists between the

tenant and the landlord. I am unsure, however, as to the exact amount the tenant is obligated to pay for monthly rent pursuant to this agreement. I find that some amount of compensation is due his monthly rent.

I find that the landlord served the tenant with the notice personally on February 4, 2022.

I accept PB's undisputed testimony that the tenant has only paid \$150 in monthly rent since December 2021, and That he has not paid any monthly rent for January to May 2022.

Section 46 of the Act, in part, states:

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*].

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(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 has not disputed the notice, within five days after receiving it or at all.

Neither has he paid the overdue rent specified on the notice, or indeed any amount, to the landlord.

I have reviewed the notice and find that it complies with the section 52 form and content requirements.

As such, per section 46(5) of the Act, I find that the tenant is conclusively presumed to have accepted that the tenancy ended on February 14, 2022. As such I find the landlord is entitled to an order of possession effective two days after it is served on the tenant.

Pursuant to section 72(1) of the Act, as the landlord has been successful in the application, it may recover the filing fee from the tenant.

Conclusion

Pursuant to sections 62, 65, 67, and 72 of the Act, I order that the tenant pay the landlord \$100, representing the reimbursement of the filing fee.

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

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 19, 2022

Residential Tenancy Branch