



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, FFL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute. On February 16, 2022 the landlord applied for:

- an order of possession, having served a 10 Day Notice to End Tenancy for Unpaid Rent, dated February 2, 2022 (the 10 Day Notice); and
- the filing fee.

Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were also made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The landlord testified that she served the Notice of Dispute Resolution Proceeding (NDRP) and her evidence on the tenants by registered mail on March 17, 2022, and the tenants confirmed they received the landlord's documents.

The tenants testified they had submitted responsive evidence to the Residential Tenancy Branch, though it was not visible to me. The tenants testified they did not serve their responsive evidence on the landlord. As the tenants' evidence was not available to me, and the tenants did not serve it on the landlord, I did not consider the tenants' evidence in my decision.

The landlord advised they are not seeking unpaid rent, only an order of possession.

Issues to be Decided

- 1) Is the landlord entitled to an order of possession?
- 2) Is the landlord entitled to the filing fee?

Background and Evidence

While I have considered all the evidence before me, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my related findings are set out below.

The parties agreed on the following particulars regarding the tenancy. It began January 1, 2021; rent was \$2,200.00 and increased to \$2,233.00 in April 2022; rent is due on the first of the month; and the tenants paid a security deposit of \$1,100.00, which the landlord still holds.

The tenants testified they still reside in the rental unit.

The landlord testified that the 10 Day Notice was served on the tenants in person on February 2, 2022, and the tenants confirmed receiving the Notice as described.

A copy of the 10 Day Notice is submitted as evidence. It is signed and dated by the landlord, gives the address of the rental unit, states an effective date, states the grounds for ending the tenancy, and is in the approved form.

The reason indicated on page 2 of the 10 Day Notice is that the tenants have failed to pay rent in the amount of \$1,100.00, due on February 1, 2022.

The landlord testified that the tenants paid rent late more than three times.

The landlord testified that the tenants had used another party's bank account numbers to commit fraud. The tenants testified that they did not commit fraud, but received financial help from an organization that assists those at risk of homelessness.

The tenants testified that they did not dispute the 10 Day Notice as they were trying to pay the amount owing within the 5-day deadline.

The tenants testified that they had difficulty paying rent when the landlord stopped accepting cheques and e-transfers, and began requiring payment using an online application.

The tenants testified they received a letter from the landlord on February 14, 2022, stating that as of March 1, 2022 the landlord would no longer accept cheques or e-transfers. Tenant BS testified that despite the letter, prior to March 1, 2022 the landlord

was not accepting cheques or e-transfer for the February rent, and that she had to pay rent via the online application.

The tenants testified that the landlord changed the application so that it would not accept cheques, and that the tenants received an email from the online application verifying this. The tenants testified that when the landlord would not accept a \$600.00 cheque from a housing society, tenant BS also paid \$600.00 on February 8, 2022 from her bank account.

The tenants testified they made payments for the February 2022 rent of \$2,200.00 as follows:

Date in 2022	Payment amount	Transaction Details
January 26	\$1,100.00	Cheque from Social Services – the tenants testified this cheque was initially accepted by the online application, but that on February 11 they learned the payment had been rejected because the landlord had changed the application to not accept cheques
February 3	\$500.00	e-transfer
February 8	\$600.00	BC Housing cheque from housing society deposited via online application
February 8	\$600.00	Payment from tenant BS's bank account
Total paid	\$2,800.00	

The landlord testified that all tenants were given notice on February 11, 2022 that the use of the payment application was to begin on March 1, 2022.

The landlord testified that the first time the tenant used the payment application was on February 24, 2022, to make a \$600.00 payment.

The landlord testified that there are ways to add bank accounts and payment methods via the application, and that this can be done by the landlord or the tenant.

Analysis

Section 46(4) of the Act provides that upon receipt of a 10 Day Notice, the tenant may, within 5 days, pay the overdue rent, or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

I find the landlord served the 10 Day Notice on the tenants in person on February 2, 2022, in accordance with section 88 of the Act.

I find that the landlord's 10 Day Notice meets the form and content requirements of section 52 of the Act, as it is signed and dated by the landlord, gives the address of the rental unit, states an effective date of the notice, states the reasons for ending the tenancy, and is in the approved form.

The tenants testified that they paid the final \$600.00 of the rent owing for February on February 8, 2022.

I find that the tenants failed to pay the overdue rent or file an application for dispute resolution by February 7, 2022, within 5 days of February 2, 2022, the timeline granted under section 46(4) of the Act. Accordingly, I find that the tenants are conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ends on the corrected effective date of the 10 Day Notice, February 12, 2022, and must vacate the rental unit.

In accordance with section 46 of the Act, I find the landlord is entitled to an order of possession.

As the tenants testified that they still reside in the rental unit, I order that in accordance with section 68(2)(a) of the Act, the tenancy ended on the date of the hearing, June 21, 2022.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the landlord is successful in their application, I order the tenants to pay the \$100.00 filing fee the landlord paid to apply for dispute resolution.

In accordance with section 72 of the Act, I allow the landlord to retain \$100.00 of the tenants' security deposit in satisfaction of the amount owing.

Conclusion

The landlord's application is granted.

The landlord is granted an order of possession which will be effective at 1:00 p.m. on June 30, 2022.

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: June 30, 2022

Residential Tenancy Branch