



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR

Introduction

This hearing dealt with the landlord's application pursuant to section 55 of the *Residential Tenancy Act* (the *Act*) for an Order of Possession.

The tenant did not attend this hearing which lasted approximately 20 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 attended with an interpreter and 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 testified that they served the tenant with the notice of hearing and evidence personally on April 7, 2022. While the landlord provided no documentary evidence in support of their service, based on the undisputed testimony I find the tenant was served with the landlord's materials in accordance with sections 88 and 89 of the *Act*.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession?

Background and Evidence

The Landlord gave undisputed testimony regarding the following facts. This periodic tenancy began about 6 years ago. There is no written tenancy agreement. The current

monthly rent is \$500.00 payable on the first of each month. The rental unit is a room in a motel.

The landlord believes there was an arrear of \$2,700.00 as at February 1, 2022 giving rise to the issuance of a 10 Day Notice. A 10 Day Notice dated February 10, 2022 was issued and served on the tenant personally on that date. The landlord was unable to explain what rent has been paid or how the amount of \$2,700.00 was calculated. The landlord failed to provide any receipts, ledgers or information showing the amount of rent payable or owing.

There was a previous hearing under the file numbers on the first page of this decision on February 1, 2022 wherein the landlord sought an Order of Possession. That application of the landlord was dismissed without leave to reapply. In that decision, in summarizing the evidence of the landlord the arbitrator writes:

The landlord further testified that the tenant is currently in arrears of rent the sum of \$3,800.00 and \$1,200.00 of that is owed for some time prior to October, 2021. The tenant hasn't paid any rent from October, 2021 to February, 2022, but was not able to tell me what rent had been paid or when.

I note that the amount of the arrear noted in the 10 Day Notice of February 10, 2022 is different from the amount the landlord testified was in arrear at the hearing of February 1, 2022.

Analysis

Section 46 of the *Act* provides that a landlord may end tenancy if rent is unpaid by giving notice to end tenancy that conforms to the form and content requirements of section 52 of the *Act*. A tenant may file an application to dispute the notice or pay the full amount of the overdue rent within 5 days of receiving the notice. Pursuant to section 46(5) a tenant who fails to make an application for dispute resolution or pay the arrear is conclusively presumed to have accepted the tenancy ends.

Under the circumstances, I find the tenant was personally served with the 10 Day Notice on February 10, 2022 in accordance with section 88 of the *Act*. I further accept the evidence of the landlord that the tenant has neither filed an application to dispute the notice nor paid the rental arrear within 5 days of service or at all.

However, given the paucity of the landlord's evidence I am not satisfied that the 10 Day Notice meets the content requirement of section 52(d) of the *Act*. Specifically, the

landlord provided little cogent information on how the amount of the arrear noted on the 10 Day Notice was calculated. The landlord provided no information as to which months rent was unpaid or how the figure of \$2,700.00 was calculated.

I am unable to find the landlord has met their evidentiary burden on a balance of probabilities, given the little information provided for this present application. Consequently, I dismiss the landlord's application.

Conclusion

The landlord's application is dismissed in its entirety without leave to reapply. This tenancy continues until ended in accordance with the *Act*.

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 14, 2022

Residential Tenancy Branch