



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR

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.

This matter was reconvened from an *ex parte*, direct request proceeding by way of an interim decision issued May 3, 2022.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:23 am in order to enable the tenant to call into the hearing scheduled to start at 11:00 am. The landlord was represented by its property manager ("**PA**") and its assistant property manager ("**CW**") 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 PA, CW, and I were the only ones who had called into the hearing.

CW testified she personally served that the tenant with the interim decision and the notice of reconvened hearing on May 6, 2022. The landlord submitted a proof of service form confirming this, which was signed by the tenant acknowledging receipt. I find that the tenant was served with these documents in accordance with section 88 and 89 of the Act.

In preparing for this hearing, I noticed that the tenant made an application to dispute a 10-day notice to end tenancy dated March 25, 2022 (the "**March Notice**"). It is set to come to a hearing on July 19, 2022. In the present application, the landlord seeks to end the tenancy on the basis of a 10-day notice to end tenancy dated December 30, 2021 (the "**December Notice**"). The existence of the July 19, 2022 hearing does not relieve the tenant of his obligation to attend the current hearing, which addresses the validity of a different notice to end tenancy.

As such, and as I am satisfied the tenant had notice of this hearing, I proceeded with the landlord's application.

Preliminary Issue – Address of Rental Unit

The rental unit is an apartment located in a larger residential property. The tenancy agreement recorded the unit number of the rental unit as “5507”. The landlord listed the rental unit’s address on this application as “(Managers Office) 507[...]”. The landlord listed the rental unit number as “507” on the December Notice. At the hearing, CW confirmed that the correct unit number for the rental unit was “507” and that the prior property manager made an error when completing the tenancy agreement.

I amend this application to remove “(Managers Office)” of the rental unit’s address.

Issues to be Decided

Is the landlord entitled to an order of possession?

Background and Evidence

While I have considered the documentary evidence and the testimony of the landlord’s representatives, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the landlord’s claims and my findings are set out below.

The parties entered into a written tenancy agreement starting June 15, 2016. Monthly rent is \$375 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$187.50, which the landlord continues to hold in trust for the tenant.

CW testified that the landlord served the December notice on the tenant byposting it to the door of the rental unit on December 30, 2021. The landlord submitted a signed and witnessed proof of service form confirming this. It listed an effective date of January 12, 2022 and specified that the tenant was \$4,875 in arrears as of December 30, 2021.

CW testified that, to her knowledge, the tenant did not dispute the December Notice within five days of receiving it, or at all. Additionally, she testified the tenant has not paid the amount of arrears owed, and that his rental arrears have increased to over \$5,000 since the December Notice was issued.

CW stated that the landlord is not seeking to recover the unpaid arrears and that, if successful in this application, the landlord seeks an order of possession effective June 30, 2022.

Analysis

Based on the undisputed testimony of CW, corroborated by the tenancy agreement and proof of service form admitted into evidence, I find that the tenant was obligated to pay \$375 in monthly rent and that the landlord served the tenant with the December Notice on December 30, 2021.

Section 46 of the Act permits a landlord to serve a notice to end tenancy for non-payment of rent on a tenant if they have failed to pay rent as required by the tenancy agreement.

Section 46(4) and (5) of the Act state:

Landlord's notice: non-payment of rent

46(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.

I accept CW's testimony that the tenant has failed to pay the full amount of the arrears stated on the December Notice. The tenant did not dispute the December Notice within five days after being served with it, or at all.

I have reviewed the December Notice, and find that it complies with the form and content requirements set out at section 52 of the Act.

Accordingly, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice (January 12, 2022).

The fact that the tenant may have disputed the March Notice within five days of being served with it has no bearing on the applicability of section 46(5) of the Act with regards to the December Notice. By the time the March Notice was served on the tenant, he was already conclusively presumed to have accepted that the tenancy ended.

Therefore, the validity of the March Notice is moot.

For the reasons set out above, I grant the landlord the order of possession sought, effective June 30, 2022.

As the landlord has not sought any monetary order, I declined to award them any amount. The landlord must comply with section 38 of the Act, when dealing with the tenant's security deposit.

Conclusion

Pursuant to section 55 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlord by June 30, 2022 at 1:00 pm.

The landlord must serve the tenant with a copy of this decision, and the attached order, within three days of receiving it from the Residential Tenancy Branch.

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 13, 2022

Residential Tenancy Branch