



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SANFORD HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a tenancy. On April 1, 2022, the landlord applied for an order of possession, having issued a 10 Day Notice to End Tenancy for Unpaid Rent, dated March 16, 2022 (the 10 Day Notice).

The landlord attended the hearing; the tenant did not. The landlord was given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses; he was made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The landlord testified he served the Notice of Dispute Resolution Proceeding (NDRP) and evidence on the tenant by attaching it to the door on April 13, 2022, and submitted a witnessed proof of service form as evidence.

Based on the landlord's affirmed undisputed testimony and documentary evidence, I find the tenant served in accordance with section 89 of the Act, and deem the documents received by the tenant on April 16, 2022, in accordance with section 90 of the Act.

Issue to be Decided

Is the landlord entitled to an order of possession?

Background and Evidence

The landlord provided the following particulars regarding the tenancy. It began November 15, 2021; rent is \$375.00, due on the first of the month; and the tenant paid a security deposit of \$300.00, which the landlord still holds.

A tenancy agreement is submitted as evidence.

A copy of the 10 Day Notice was submitted as evidence. The landlord testified that the Notice was served on the tenant on March 16, 2022, by posting it to the door and sending it registered mail. The landlord submitted a tracking number as noted on the cover page of this decision.

The 10 Day Notice is signed and dated by the landlord, gives the address of the rental unit, states the effective date, states the reason for ending the tenancy, and is in the approved form. The 10 Day Notice indicates the tenancy is ending because the tenant failed to pay rent in the amount of "\$ 375Dec + 375March," due on March 1, 2022.

The landlord testified that the tenant did not pay rent in the amount of \$375.00 for December 2021 or March 2022. A tenant ledger is submitted in support. The landlord testified they have been providing receipts "for use and occupancy only"; receipts are submitted in support.

The landlord testified he is not seeking the unpaid rent, just an order of possession.

Analysis

Pursuant to section 46(1) of the Act, 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. A notice under this section must comply with the form and content provisions of section 52.

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

- (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.

Based on the landlord's affirmed undisputed testimony, I find the landlord served the 10 Day Notice on the tenant on March 16, 2022 by posting it to the door, in accordance with section 88 of the Act. I deem the Notice received by the tenant on March 19, 2022, in accordance with section 90 of the Act.

As the 10 Day Notice is signed and dated by the landlord, gives the address of the rental unit, states the effective date, states the reason for ending the tenancy, and is in the approved form, I find it meets the form and content requirements of section 52 of the Act.

I find that the tenant did not file an application for dispute resolution within 5 days of March 19, 2022, the timeline granted under section 46(4) of the Act. Accordingly, I find that the tenant is conclusively presumed under section 46(5) to have accepted that the tenancy ended and must vacate the rental unit.

Therefore, I find the landlord is entitled to an order of possession.

Although section 55(4) of the Act allows an arbitrator to grant a monetary order for non-payment of rent in these circumstances, the landlord confirmed he was only seeking an order of possession.

Conclusion

The landlord's application is granted.

The landlord is granted an order of possession which will be effective two days after it is served on the tenant.

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: July 25, 2022

Residential Tenancy Branch