



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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A matter regarding Nest Property Management and Real Estate
Service and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL

Introduction

The landlord seeks a monetary order for unpaid rent and an order of possession based on an undisputed 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to sections 26, 46, 55 and of the *Residential Tenancy Act* (“Act”). In addition, the landlord seeks recovery of the application filing fee under section 72 of the Act.

Attendance of Parties and Service of Notice of Dispute Resolution Proceeding

Attending the dispute resolution hearing was a representative for the named landlord (which is acting as agent for the property owner). The tenant did not attend the hearing, which commenced at 9:30 AM and ended at 9:43 AM. The representative was affirmed and testified that both Notice of Dispute Resolution Proceeding packages had been sent by registered mail on April 26 and May 24 (which included the notice for today’s hearing), 2022. Both packages were returned unclaimed. Based on this sworn, undisputed testimony and applying section 90 of the Act, it is my finding that the tenant was served with the documentation necessary for her to participate in this proceeding.

Issues

1. Is the landlord entitled to an order of possession?
2. Is the landlord entitled to a monetary order?
3. Is the landlord entitled to recover the cost of the application filing fee?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the issues of this dispute, and to explain the decision, is reproduced below.

The tenancy began November 15, 2019 and monthly rent, which is due on the first day of the month, was \$1,100.00. A rent increase of \$15.00 occurred on May 1, 2022, after which rent was \$1,115.00. The tenant paid a \$550.00 security deposit. As of August 2, 2022, the tenant owes \$21,860.00 in rent arrears.

A copy of a written tenancy agreement was in evidence. (It should be noted that the landlord's direct request application was adjourned to a participatory hearing due to naming issue on the agreement; the agent explained that the landlord as named in this application is the agent for the property owner. The property owner's brother's name appears on the tenancy agreement.)

On April 5, 2022 the landlord served the Notice on the tenant. A copy of the Notice and a proof of service document were in evidence. The landlord testified that to their knowledge the tenant did not dispute the Notice. The tenant may have vacated the rental unit sometime last week, but the landlord is not entirely certain of this.

Analysis

1. Order of Possession

Section 55(2)(c) of the Act permits a landlord to request an order of possession when a notice to end the tenancy has been given by the landlord, the tenant has not made an application to dispute the notice, and the time for making any such application has expired.

In this case, the Notice was given by the landlord, there is no evidence that the tenant made an application to dispute the Notice, and the time for making any such application has long since expired. Therefore, based on the undisputed sworn evidence before me it is my finding that the landlord is entitled to an order of possession.

A copy of the order of possession is issued to the landlord, in conjunction with this decision. The order of possession will have a two-day effective period.

2. Monetary Order for Unpaid Rent

Section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement unless the tenant has a right under the Act to deduct all or a portion of the rent.

In this case, the tenant was required to pay rent of \$1,100.00 on the first day of the month until May 1, 2022, after which the tenant was to pay rent of \$1,115.00. The tenant owed rent arrears of \$12,700.00 when the Notice was served, and arrears have since accumulated to \$21,860.00.

Taking into consideration all the undisputed oral and documentary evidence before me, it is my finding that the landlord has proven on a balance of probabilities that the tenant owes rent in the amount of \$21,860.00.

3. Application Filing Fee

As the landlord was successful in its application, they are granted \$100.00 to pay for the cost of the application filing fee, pursuant to section 72 of the Act.

Summary of Monetary Award and Order

In total, the landlord is awarded \$21,960.00.

Section 38(4)(b) of the Act permits me to authorize a landlord to retain a tenant's security deposit after the end of a tenancy. As such, the landlord is hereby ordered to retain the tenant's security deposit of \$550.00 in partial satisfaction of the amount awarded. The balance of the award—\$21,410.00—is issued on monetary order. A copy of this monetary order is issued in conjunction with this decision, to the landlord.

Conclusion

The landlord's application is hereby GRANTED.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: August 2, 2022

Residential Tenancy Branch