



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Bayside Property Serv Ltd ITF5250 Investment
Ltd and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR, MNR-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 March 17, 2022 the landlord applied for:

- an order of possession for the rental unit, having issued a 10 Day Notice to End Tenancy, dated March 4, 2022 (the 10 Day Notice);
- a monetary order for unpaid rent; and
- the filing fee.

The hearing was attended by the landlord's representatives, and tenant MS. Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

Neither party raised an issue regarding the service of documents.

Issues to be Decided

- 1) Is the landlord entitled to an order of possession?
- 2) Is the landlord entitled to a monetary order for unpaid rent?
- 3) Is the landlord entitled to the filing fee?

Background and Evidence

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

The parties agreed on the following particulars of the tenancy. It began April 1, 2019; rent is \$2,131.00, due on the first of the month; and the tenants paid a security deposit of \$1,050.00, which the landlord still holds.

A copy of the 10 Day Notice is submitted as evidence and indicates the tenancy is ending because the tenants failed to pay rent in the amount of \$4,262.00, due on March 1, 2022. The Notice states an effective date of March 19, 2022. The landlord testified the Notice was served on the tenants by registered mail on March 4, 2022, and submitted a tracking number in support. The tenant testified he did not receive the Notice as he was not able to get to the post office, given his work schedule.

The tenant testified they did not apply to dispute the 10 Day Notice.

The landlord testified that prior to COVID, the tenants had usually paid the rent on time, but then they began to pay late, eventually paying the rent late 28 months out of 40.

The landlord testified the \$4,262.00 recorded on the 10 Day Notice was not paid within 5 days of the tenant receiving the Notice. The landlord testified that the onsite caretaker was continually having to ask the tenants about late rent payments.

The tenant testified that he and the co-tenant both lost their jobs as a result of the pandemic, but now each are employed, with second jobs, and have paid rent on time for the last 5 months.

The tenant testified that on April 22, 2022, they received an email from property manager PL, stating that their account is \$4,412.00 in arrears, but that if they can pay that amount by May 16, 2022, the tenants will be permitted to stay in the rental unit, but, if the tenants are late with rent after that, they will be served with a One Month Notice for repeated late payment of rent.

The tenant testified that they paid the \$4,412.00 by May 16, 2022, and have not been late with rent since.

Property manager PL confirmed that he sent the email, and testified that he was later instructed by the property owner to continue seeking an order of possession.

PL did not provide evidence demonstrating the landlord communicated to the tenants that they would not be allowed to remain in the property after all, and that the landlord was proceeding with seeking an order of possession.

PL testified that the tenants were provided with receipts “for use and occupancy only,” which are submitted as evidence. PL testified that a late fee was charged on May 25, 2022, which is still outstanding. The landlord’s representatives did not testify that rent was owing as of the hearing.

Analysis

Based on the landlord’s affirmed undisputed testimony and evidence, I find the 10 Day Notice was served on the tenants by registered mail on March 4, 2022, in accordance with section 88 of the Act, and that it was deemed received by the tenants on March 9, 2022, pursuant to section 90 of the Act.

As the tenant testified he did not dispute the 10 Day Notice, I find that in accordance with section 46(5), the tenants were conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, March 19, 2022, and were required to vacate the rental unit by that date.

However, the tenants did not vacate the rental unit, and the parties agree that the landlord told the tenants the tenancy could continue if they paid the arrears of \$4,412.00 by May 16, 2022, which the tenant testified they did. This was not disputed by the landlord.

[Policy Guideline 11](#). *Amendment and Withdrawal of a Notice to End Tenancy* states that express waiver of a notice happens when a landlord and tenant explicitly agree to waive a right or claim, and that with express waiver, the intent of the parties is clear and unequivocal. This is not the case here, as the landlord continued to give receipts “for use and occupancy only” and did not withdraw their application for an order of possession. Implied waiver happens when a landlord and tenant agree to continue a tenancy, but without a clear and unequivocal expression of intent. Instead, the waiver is implied through the actions or behaviour of the landlord or tenant.

I find that as the landlord’s April 2022 email states that the tenancy would continue if the tenants paid the arrears of \$4,412.00 by May 16, 2022, it was implied that the landlord would not exercise their right to an order of possession. While I note that the landlord issued receipts “for use and occupancy only,” in the absence of any express communication to the tenants that rent was only being accepted until the landlord could secure an order of possession, I don’t place any value of the notation on the receipts as

evidence that the landlord did not intend to reinstate the tenancy if the tenants paid the arrears by May 16, 2022.

I find that the landlord's April 2022 email implied a waiver of their right to an order of possession, and that when the tenants acted on the email and paid the arrears, the tenancy was reinstated. The 10 Day Notice has no force or effect. I order the tenancy to continue until it is ended in accordance with the Act.

I decline to consider the \$25.00 late fee as the landlord has not applied for it.

As the landlord is unsuccessful in their application, I decline to award the filing fee.

Conclusion

The landlord's application is dismissed; the tenancy will continue until it is 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: August 15, 2022

Residential Tenancy Branch