



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPU-DR, MNU-DR, FFL
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Introduction

This hearing was scheduled to convene at 1:30 p.m. on August 25, 2022 by way of conference call concerning 2 applications made by the landlord both seeking an Order of Possession and a monetary order for unpaid rent or utilities and to recover the filing fee from the tenants for the cost of the applications.

The landlord was represented at the hearing by an agent, who gave affirmed testimony and provided evidentiary material in advance of the hearing. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenants joined the call.

The landlord's agent advised that the tenants were individually served with the Notice of Dispute Resolution Proceeding and evidence by registered mail on July 20, 2022 by another agent of the landlord, and was permitted to provide proof of such service after the hearing concluded. I now have tracking results showing that the 2 packages were sent on July 20, 2022, and I am satisfied that both tenants have been served in accordance with the *Residential Tenancy Act*.

During the course of the hearing, the landlord's agent advised that the first Application for Dispute Resolution was supposed to be withdrawn, but for an unknown reason it was not, and the landlord withdraws the first claim.

Issue(s) to be Decided

- Has the landlord established that the notice to end the tenancy was given in accordance with the *Residential Tenancy Act*?

- Has the landlord established a monetary claim as against the tenants for unpaid rent or utilities?

Background and Evidence

The landlord's agent testified that this fixed term tenancy began on November 1, 2020 and reverted to a month-to-month tenancy after October 31, 2021, and the tenants still reside in the rental unit. Rent in the amount of \$1,450.00 was payable on the 1st day of each month, and was increased to \$1,471.00 effective January 1, 2022. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$725.00 as well as a pet damage deposit in the amount of \$725.00, both of which are still held in trust by the landlord. The rental unit is an apartment in a complex and a copy of the tenancy agreement has been provided for this hearing.

The landlord's agent further testified that the tenants are currently in arrears of rent the sum of \$494.16 for July's rent and \$1,471.00 for August, 2022 rent.

On December 7, 2021 another agent of the landlord posted to the door of the rental unit a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and a copy has been provided for this hearing. It is dated December 7, 2021 and contains an effective date of vacancy of December 17, 2021 for unpaid rent in the amount of \$1,450.00 that was due on December 1, 2021 and unpaid utilities in the amount of \$130.16 following written demand on April 19, 2021. The landlord's agent's boss asked to ensure that it was served by posting it to the door, and asked that it also be served by registered mail. On December 7, 2021 the landlord's agent sent a copy of the Notice to the tenants by registered mail and has provided a Proof of Service document.

The tenants have made multiple payments, including additional payments in April, May and June, 2022. On June 29 and on July 5, 2022 the landlord gave receipts to the tenants indicating that the rent money is received for use and occupancy only and did not serve to reinstate the tenancy. A copy of the June 29, 2022 receipt has also been provided for this hearing showing a payment received of \$2,421.00, with a notation that the payment does not serve to reinstate the tenancy. Also provided is a tenant ledger running from November 1, 2020 to March 2, 2022, which shows that the tenants fell further into arrears after the Notice was served.

The tenants were supposed to put the hydro in their name but delayed in doing so, so the amount of \$130.16 was billed back to the tenants. A copy of the hydro bill has also been provided for this hearing. Evidence also shows that the tenants paid \$100.00 toward the bill on October 21, 2021.

The landlord seeks an Order of Possession and a monetary order in the amount of \$1,965.16 for the unpaid rent, \$30.16 for unpaid utilities as well as recovery of the \$100.00 filing fee.

Analysis

Firstly, the *Residential Tenancy Act* specifies that where a tenant is served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant has 5 days to pay the rent in full, in which case the Notice is of no effect, or to dispute the Notice. If the tenant fails to do either, the tenant is conclusively presumed to have accepted the end of the tenancy.

In this case, the Notice was served by registered mail on December 7, 2021 which is deemed to have been served 5 days later, or December 12, 2021. According to the tenant ledger, the tenants did not pay the rent or utilities in full within 5 days, and I have no application from the tenants disputing the Notice. Therefore, I find that the tenants are conclusively presumed to have accepted the end of the tenancy.

I have reviewed the Notice, and I find that it is in the approved form and contains information required by the *Act* and I find that the landlord is entitled to an Order of Possession. Since the effective date of vacancy has passed, I grant the Order of Possession effective on 2 days notice to the tenants.

I am also satisfied in the evidence that the tenants are in arrears of rent the sum of \$1,965.00 as well as utilities totaling \$30.16, for a total of \$1,995.32.

Since the landlord has been successful with the application the landlord is also entitled to recovery of one of the \$100.00 filing fees. Since the landlord has withdrawn the first application, the landlord's application for recovery of the first filing fee is dismissed.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenants.

I further grant a monetary order in favour of the landlord as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,095.32.

This order is final and binding and may be enforced.

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: September 05, 2022

Residential Tenancy Branch