



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 2 BAKER DEVELOPMENTS
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord July 18, 2022 (the “Application”). The Landlord applied for an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 16, 2022 (the “Notice”).

T.S., K.B. and J.S. (the “Agents”) appeared at the hearing for the Landlord. Nobody appeared at the hearing for the Tenant. I explained the hearing process to the Agents. I told the Agents they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Agents provided affirmed testimony.

The Agents provided the correct rental unit address which is reflected on the front page of this decision.

The Landlord submitted evidence prior to the hearing. The Tenant did not submit evidence. I addressed service of the hearing package and Landlord’s evidence.

The Agents testified that the hearing package and Landlord’s evidence were served on the Tenant in person September 02, 2022.

Based on the undisputed testimony of the Agents, I am satisfied the Tenant was served with the hearing package and Landlord’s evidence in accordance with sections 88(a) and 89(2)(a) of the *Residential Tenancy Act* (the “Act”) on September 02, 2022. I find the Landlord complied with rule 3.1 of the Rules in relation to the timing of service.

Given I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Agents were given an opportunity to present relevant evidence and make

relevant submissions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

Issue to be Decided

1. Is the Landlord entitled to an Order of Possession based on the Notice?

Background and Evidence

The Agents testified as follows.

The written tenancy agreement submitted is accurate. Rent is currently \$757.00 per month. Rent is due on the last day of each month.

The Notice was issued because the Tenant failed to pay \$457.00 of rent in May 2022 and \$757.00 for June 2022, for a total of \$1,214.00 as shown on the Notice.

The Tenant did not have authority under the *Act* to withhold rent.

The Notice was served on the Tenant in person June 16, 2022, as shown in the Proof of Service submitted.

The Tenant made one payment after the Notice was issued, \$860.00 June 30, 2022.

The Tenant did not dispute the Notice.

The Landlord is seeking an Order of Possession effective two days after service on the Tenant.

The Landlord submitted the following documentary evidence:

- The Notice which has an effective date of June 26, 2022
- Proof of Service of the Notice
- Direct Request Worksheet
- Tenancy agreement

Analysis

Section 26(1) of the *Act* requires a tenant to pay rent in accordance with the tenancy agreement unless they have a right to withhold rent under the *Act*.

Section 46 of the *Act* allows a landlord to end a tenancy when a tenant fails to pay rent. The relevant portions of section 46 state:

- 46 (1) 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.
- (2) A notice under this section must comply with section 52...
- (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.
- (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 the undisputed testimony of the Agents and based on it, as well as the documentary evidence provided, I find the following.

The Tenant is required to pay \$757.00 in rent per month by the last day of each month pursuant to the tenancy agreement.

The Tenant did not have authority under the *Act* to withhold rent at any point.

The Tenant was required to pay \$757.00 for May rent and \$757.00 for June rent by the last day of the month prior pursuant to section 26(1) of the *Act* and section 46(3) of the *Act* does not apply.

The Tenant failed to pay \$457.00 of May rent and \$757.00 of June rent and therefore owed \$1,214.00 as of May 31, 2022. Given the Tenant failed to pay rent as required, the Landlord was entitled to serve the Tenant with the Notice pursuant to section 46(1) of the *Act*.

The Notice was served on the Tenant in accordance with section 88(a) of the *Act* on June 16, 2022.

I have reviewed the Notice and find it complies with section 52 of the *Act* in form and content as required by section 46(2) of the *Act*.

The Tenant had five days from receipt of the Notice on June 16, 2022, to pay the outstanding rent in full or dispute the Notice pursuant to section 46(4) of the *Act*.

The Tenant did not pay any rent within five days of receiving the Notice.

The Tenant did not dispute the Notice.

Given the Tenant did not pay the outstanding rent in full or dispute the Notice as required, I find pursuant to section 46(5)(a) of the *Act* that the Tenant is conclusively presumed to have accepted that the tenancy ended June 26, 2022, the effective date of the Notice. The Tenant was required pursuant to section 46(5)(b) of the *Act* to vacate the rental unit by June 26, 2022.

The Landlord is entitled to an Order of Possession. Pursuant to section 55 of the *Act*, I issue the Landlord an Order of Possession effective two days after service on the Tenant.

Conclusion

The Landlord is entitled to an Order of Possession effective two days after service on the Tenant. This Order must be served on the Tenant and, if the Tenant does not

comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

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: November 29, 2022

Residential Tenancy Branch