



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Page: 1

DECISION

Dispute Codes OPR MNRL FFL

Introduction

The landlord seeks an order of possession on an undisputed *10 Day Notice to End Tenancy for Unpaid Rent* (the “Notice”) under sections 46 and 55 of the *Residential Tenancy Act* (the “Act”). The landlord also seeks a monetary order for unpaid rent and to recover the cost of the filing fee under sections 26 and 72, respectively, of the Act.

Issues

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 recover the cost of the application filing fee?

Background and Evidence

The landlord gave the following, undisputed evidence under oath:

He served a copy of the *Notice of Dispute Resolution Proceeding* on the door of the rental unit within three or four days of receiving the *Notice of Dispute Resolution Proceeding* from the Residential Tenancy Branch by email on July 20, 2022. The tenant came out, saw the notice, and threw it on the ground. The tenant then went back into the house, whereinafter the landlord retrieved the notice and re-attached it to the door. The tenant was therefore served with the Notice of Dispute Resolution Proceeding but failed to attend the hearing.

Monthly rent is \$500.00. There is no security or pet damage deposit on this tenancy, nor is there a written tenancy agreement in place.

The landlord served the Notice by posting it on the door on June 3, 2022. A copy of the Notice was in evidence, and it indicated that as of June 1, 2022 the tenant had not paid rent. The tenant has not paid rent since March 2022 and rent arrears are, according to the landlord, currently \$4,500.00.

The only documentary evidence submitted by the landlord was a copy of the Notice and various proof of service documents.

Analysis

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. The oral, unwritten tenancy agreement for this tenancy requires that the tenant pay rent in the amount of \$500.00 on the first day of the month.

Section 46(1) of the Act permits a landlord to end a tenancy if rent is unpaid on any day after the day it is due, by issuing a *10 Day Notice to End Tenancy for Unpaid Rent*. A notice to end tenancy given under this section must comply with section 52 (form and content) of the Act.

The landlord issued the Notice by posting it on the door of the rental unit on June 3, 2022. This is a valid method of service under section 88 of the Act.

Section 46(5) of the Act states that 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.

The tenant had five days after receiving the Notice to either pay the outstanding rent or file an application disputing the Notice. They did neither. As such, they are conclusively presumed to have accepted that the tenancy ended no later than June 16, 2022 (June 13, 2022 plus three days deemed received as per section 90(c) of the Act).

Section 52 of the Act states that

- In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,

(d.1) for a notice under [section 45.1](#) [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with [section 45.2](#) [*confirmation of eligibility*], and
(e) when given by a landlord, be in the approved form.

Having reviewed the Notice I find that it complies with section 52 of the Act.

Section 55(2)(b) of the Act states that a landlord may request an order of possession when a tenant has been given a notice to end tenancy and where they have not disputed the notice. In this case, the tenant has not disputed the Notice and as such the landlord is entitled to an order of possession. A copy of the order of possession is issued with this decision to the landlord. The landlord must serve a copy of the order of possession on the tenant.

The landlord has also proven, on a balance of probabilities, that he is entitled to a monetary order in the amount of \$4,500.00 for unpaid rent. The landlord is entitled to recover the cost of the \$100.00 application filing fee. As such, the total monetary order shall be in the amount of \$4,600.00. A copy of the monetary order is issued with this decision to the landlord and the landlord must also serve a copy of the monetary order upon the tenant.

Conclusion

IT IS HEREBY ORDERED THAT:

1. The landlord be granted an order of possession.
2. The landlord be granted a monetary order in the amount of \$4,600.00.
3. The tenancy ended effective June 16, 2022.

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