



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- an order of possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent in the amount of \$5,114.52 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

This matter was reconvened from an *ex parte*, direct request proceeding by way of an interim decision issued August 5, 2022.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:55 pm in order to enable the tenant to call into the hearing scheduled to start at 1:30 pm. The landlord's building community manager ("**AL**") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I used the teleconference system to confirm that AL and I were the only ones who had called into the hearing.

AL testified she served that the tenant with the notice of dispute resolution package and supporting documentary evidence via registered mail on August 5, 2022 and with the amendment to the application on November 16, 2022 via registered mail. She provided Canada Post tracking number confirming these mailings which are reproduced on the cover of this decision. The Canada Post website indicates that each of the mailing was received and signed for. I find that the tenant is deemed served with these documents five days after the landlord mailed them, in accordance with sections 88, 89, and 90 of the Act.

I note that AL stated that the landlord, although seeming styled as two separate entities, in a single entity. I will refer to the landlord in the singular in this decision.

Preliminary Issue – Amendment

At the hearing the landlord sought to further amend its application to include a claim for rent for July to December 2022 (inclusive), which AL testified remains outstanding.

Rule of Procedure 4.2 states:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

In this case, the landlord is seeking compensation for unpaid rent that has increased since it first applied for dispute resolution in June 2022, I find that the increase in the landlord's monetary claim should have been reasonably anticipated by the tenant. Therefore, pursuant to Rule 4.2, I order that the landlord's application be amended to include a claim for July, August, September, October, November, and December 2022 rent (\$25,368).

Issues to be Decided

Is the landlord entitled to:

- 1) an order of possession;
- 2) a monetary order for \$30,482.52; and
- 3) recover the filing fee?

Background and Evidence

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

The rental unit is one of 16 ground-level town houses that are associated with and managed as a part of a multi-story apartment building.

The parties entered into a written, fixed term tenancy agreement starting May 10, 2022 and ending May 31, 2023. Monthly rent is \$4,228 and is payable on the first of each month. AL testified that the tenant was required to pay a reduced amount of rent for May 2022, in the amount of \$886.52.

The tenancy agreement required that tenant provide the landlord with a security deposit of \$2,114. However, AL testified that the cheque the tenant gave the landlord bounced. Accordingly, the landlord does not hold any amount in trust for the tenant.

AL testified that the cheque the tenant gave the landlord for May 2022 rent bounced, and that the tenant did not pay any rent for June 2022. On June 14, 2022, AL served the tenant with a 10 Day Notice to End Tenancy for Non-Payment of Rent (the “**Notice**”) by placing it in the mail slot of the rental unit. She submitted a witnessed proof of service for confirming this. The Notice specified arrears owed of \$5,114.52 and listed an effective date of June 25, 2022. The tenant did not dispute the Notice.

The Notice listed the address of the rental unit “959 – 939 B Street”. However, the tenancy agreement lists the rental unit address as “959 – 959 B Street”. AL testified that 939 B Street is the address of multi-story apartment building that the rental unit is associated with. She testified that each associated townhouse has its own street address, with the rental unit’s street address being “959 B Street”. AL also stated that this is the correct address of the rental unit, notwithstanding the fact that the tenancy agreement lists it as “959 – 959 B Street.” She testified that she amended this application in November 2022 to change the address of the rental unit from “959 B Street” to “959 – 959 B Street” so that the address on the application would match the address on the tenancy agreement (the fact that these addresses did not match was one of the reasons listed in the interim decision for this matter being adjourned to a participatory hearing).

AL testified that the landlord’s internal system had incorrectly recorded the rental unit’s address as “959 – 939 B Street”, which is why that address was listed on the Notice. However, she testified that despite this error, she delivered it to the rental unit at the correct address.

AL testified that the evening before the hearing, the tenant sent a bank draft to the landlord for roughly \$29,000. She has not yet been able to confirm whether the draft is valid.

Analysis

Section 46 of the Act, in part, states:

Landlord's notice: non-payment of rent

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 *[form and content of notice to end tenancy]*.

[...]

(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 AL's undisputed testimony in its entirety. I find that the tenant has failed to pay the security deposit or any rent whatsoever during the tenancy and that as of June 1, 2022, the tenant was \$5,114.52 in arrears. As of December 1, 2022, I find that the tenant is \$30,482.52 in arrears.

I find that AL served the tenant with the Notice at the rental unit by placing it in the mail slot on June 16, 2022. The tenant did not pay the amount of arrears specified, nor did he dispute the Notice.

Section 52 of the Act, in part, states:

Form and content of notice to end tenancy

- 52** 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,
[...]
 - (e) when given by a landlord, be in the approved form.

I have reviewed the Notice and find that it complies with all the requirements but that of section 52(b) of the Act, as it lists the address of the rental unit incorrectly (959-939 B Street as opposed to 959 B-Street).

However, this does not necessarily mean that the Notice is invalid. Section 68 of the Act states:

Director's orders: notice to end tenancy

- 68(1)** If a notice to end a tenancy does not comply with section 52 *[form and content of notice to end tenancy]*, the director may amend the notice if satisfied that
- (a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and
 - (b) in the circumstances, it is reasonable to amend the notice.

- (2) Without limiting section 62 (3) [*director's authority respecting dispute resolution proceedings*], the director may, in accordance with this Act,
- (a) order that a tenancy ends on a date other than the effective date shown on the notice to end the tenancy, or
 - (b) set aside or amend a notice given under this Act that does not comply with the Act.

Based on the facts that the Notice listed the rental unit's street address ("959") as the suite address, and as the Notice correctly named the tenant and was delivered to the correct address, I find that the tenant reasonably ought to have known that correct address of the rental unit. I do not find it reasonable for the tenant to have been confused by the error on the Notice.

In light of the amount of arrears that are owed, the fact the tenant did not dispute the Notice nor attend the hearing despite being served with the dispute resolution package and the amendment, I find it reasonable in the circumstances to amend the Notice so that it states the correct address of the rental unit: 959 B Street. With this amendment, I find that the Notice is valid.

Accordingly, as the tenant did not dispute the Notice, I find that the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice and that the landlord is entitled to an order of possession. At the hearing, AL stated that the landlord seeks the order of possession to be enforceable on December 31, 2022.

I also order the address of the rental unit on this application be amended from "959 – 959 B Street" back to "959 B Street."

As stated above, the tenant is \$30,482.52 in arrears. Pursuant to section 67 of the Act, I order that the tenant pay the landlord this amount. I accept that the landlord may have received approximately \$29,000 from the tenant on December 8, 2022. However, I cannot say for certain if the instrument provided is genuine. If it is, and the landlord is able to deposit it in its account, the landlord must deduct the amount deposited from the monetary order made above. However, I will issue an order that the tenant pay the landlord the full amount of arrears owed.

Pursuant to section 72(1) of the Act, as the landlord has been successful in the application, it may recover the filing fee from the tenant.

Conclusion

Pursuant to sections 67 and 72 of the Act, I order that the tenant pay the landlord \$30,582.52, representing the following the repayment of rental arrears for the duration of the tenancy (\$30,482.52) plus the filing fee (\$100).

Pursuant to section 55 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlord by December 31, 2022 at 1:00 pm.

I order the landlord to serve the tenant with a copy of this decision and the attached orders no later than three days after receiving it from the Residential Tenancy Branch.

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: December 9, 2022

Residential Tenancy Branch