



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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A matter regarding McLaren Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR

Introduction

The landlord seeks an order of possession on an undisputed notice to end tenancy under section 55(2)(b) of the *Residential Tenancy Act* (the “Act”). The landlord also seeks to recover the cost of the filing fee under section 72 of the Act.

A hearing was held by teleconference on December 6, 2022 at 9:30 AM. Only an agent of the not-for-profit society landlord attended. The agent testified under oath that they served a *Notice of Dispute Resolution Proceeding* on the tenant by registered mail. There is proof of tracking information submitted it into evidence. It is my finding that the tenant was served with the required notice in compliance with the Act.

Preliminary Issue: Jurisdiction

I note that the landlord’s application was initially made by way of direct request. An adjudicator reviewing the application believed that the tenancy agreement may have been excluded under the Act. The adjudicator thought that perhaps the tenancy was excluded under section 4(g)(v) of the Act in which living accommodation “in a housing based health facility that provides hospitality support services and personal health care”.

However, my reading of the residential tenancy agreement does not persuade me that the landlord provides, or is in the business of running, a housing-based health facility. While the landlord does provide optional support services to its residents, it is not the primary purpose in the sense that the landlord is operating a “health facility.” Further, the tenancy agreement, which is the same tenancy agreement used for all of its tenants (according to the landlord’s agent) is quite clear in its language that the Act applies.

Therefore, it is my finding that this tenancy, and likely most tenancy agreements used by the McLaren Housing Society, fall within the jurisdiction of the Act. While this Decision does not provide precedent for future applications made by the landlord, it *may* assist in the decision-making by adjudicators reviewing such applications.

Issues

1. Is the landlord entitled to an order of possession?
2. Is the landlord entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began on February 1, 2017. Rent is \$375. The landlord currently retains a security deposit in the amount of \$893.

On June 3rd, 2022, the landlord served a *10 Day Notice to End Tenancy for Unpaid Rent* (the “Notice”). Service was executed by being posted on the door. Page two of the Notice indicates that the tenant did not pay rent in the amount of \$75 that was due on May 1, 2022. All pages of the Notice were served and submitted into evidence. The tenant has not disputed the Notice and the landlord seeks an order of possession.

Analysis

Section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement. The tenancy agreement requires that the tenant pay rent 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.

Section 55(2)(c) of the Act permits a landlord to request an order of possession when a notice to end the tenancy has been given by the landlord, the tenant has not made an application to dispute the notice, and the time for making any such application has expired.

In this case, the landlord served the Notice in accordance with the Act, the Notice is, I find, in compliance with section 52 of the Act, and the tenant has not made an application to dispute the Notice. As such, it is my finding that the landlord has proven on a balance of probabilities that they are entitled to an order of possession. A copy of the order of possession is issued with this Decision to the landlord.

Section 72 of the Act permits an arbitrator to order payment of a fee by one party to a dispute resolution proceeding to another party. In this dispute, as the landlord was successful in their application the tenant is ordered pay the landlord \$100.

Section 38(4)(b) of the Act permits an arbitrator to authorize a landlord to retain a tenant's security deposit after the end of a tenancy. As such, the landlord is authorized to retain \$100 of the tenant's security deposit to pay for the filing fee.

Conclusion

The application is hereby granted.

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: December 6, 2022

Residential Tenancy Branch