



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding 682 GIBSONS WAY HOLDINGS LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL

Introduction

This participatory hearing was set pursuant to an Interim Decision issued on January 30, 2023 in response to the landlord's application for an Order of Possession and Monetary Order for unpaid rent, made under the Direct Request procedure.

At the participatory hearing, only the landlord's agent appeared. The landlord's agent was affirmed.

I explored service of the Notice of Dispute Resolution Proceeding upon the tenants. The landlord's agent testified the Notice of Dispute Resolution Proceeding was sent to the tenant via registered mail on February 2, 2023; however, the registered mail was returned as unclaimed. The landlord provided registered mail receipts, including tracking numbers, as proof of service.

The landlord sent additional evidence to the tenants on February 14, 2023 but those packages were also unclaimed. The landlord provided registered mail receipts, as proof of service.

I enquired as to whether the tenants continue to reside in the rental unit. The landlord's agent stated there appears to be furniture in the rental unit and the landlord did receive a subsidy payment from a society on behalf of the tenants for the month of February 2023. Based on this information, I was satisfied the tenants were likely residing in the rental unit when the Notice of Dispute Resolution Proceeding and the additional evidence was sent to the tenants.

Section 90 of the Act deems a person to be in receipt of documents five days after mailing, even if the recipient refuses to accept or pick up their mail. In keeping with section 90 of the Act, I deemed the tenants served with notification of this proceeding on

February 7, 2023 and the additional evidence on February 19, 2023. I continued to hear from the landlord without the tenants present.

During the hearing, the landlord's agent requested authorization to retain the tenant's security deposit in partial satisfaction of the unpaid rent. I find this request for amendment to be non-prejudicial to the tenants as it would decrease any Monetary Order I may issue and I permitted the amendment.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession due to unpaid rent?
2. Is the landlord entitled to a Monetary Order for unpaid and/or loss of rent?
3. Is the landlord authorized to retain the tenant's security deposit?
4. Award of the filing fee.

Background and Evidence

The tenancy started on March 10, 2022 and was to be for a fixed term set to expire on March 31, 2023. The tenants paid a security deposit of \$1095.00 and were required to pay rent of \$2190.00 on the first day of every month.

The tenants paid their rent in various ways, including: a rent subsidy payment from a third party society, by e-transfer and by electronic funds transfer (EFT).

The tenants were behind in their rent payments and then the tenant's EFT for October 2022 was declined. On October 12, 2022 the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day notice") by sending it to them by registered mail sent on October 12, 2022 and by posting it to the door of the rental unit on October 12, 2022.

The 10 Day Notice indicates the tenants owed \$2220.00 in unpaid rent and has a stated effective date of October 27, 2022.

After serving the 10 Day Notice, the tenants did not pay the outstanding rent or file to dispute the 10 Day Notice.

The third party society continued to send the landlord \$400.00 payments for the months of November 2022 through February 2023 even though the landlord informed the third party society that the tenants had not paid the balance of their rent. The landlord also

issued a letter to the tenants indicating they were accepting the \$400.00 for use and occupancy only.

In the landlord's Application for Dispute Resolution, the landlord requested recovery of \$5900.00 for unpaid rent up to and including the month of December 2022 plus NSF fees. During the hearing, the landlord confirmed the landlord is seeking to recover the amount stated on the application.

Documentary evidence provided by the landlord included a copy of: the tenancy agreement; 10 Day Notice; a rent ledger; letters regarding the \$400.00 rent subsidy payments; and, several registered mail receipts.

Analysis

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right to withhold rent. I was not provided any evidence to suggest the tenants had the legal right to withhold rent from the landlord.

Where a tenant does not pay rent the landlord is at liberty to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the 10 Day Notice or the tenant has five days to dispute the 10 Day Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the 10 Day Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the 10 Day Notice.

I accept the unopposed evidence before me that the tenants were required to pay rent of \$2190.00 on the first day of every month and the tenants has failed to do so in October 2022 and in previous months. I also accept that the landlord sent a 10 Day Notice to the tenants via registered mail on October 12, 2022 upon review of the registered mail receipt. Although the registered mail was not picked up by the tenants, it is deemed served five days after mailing pursuant to section 90 of the Act. Accordingly, I find tenants had until October 22, 2022 to either pay the outstanding rent or file to dispute the 10 Day Notice. Since the tenants did neither, I find the tenancy ended on the stated effective date of October 27, 2022. There is nothing to suggest the tenancy was reinstated by the small partial subsidy payments. Therefore, I am satisfied

the landlord is entitled to regain possession of the rental unit and I provide the landlord with an Order of Possession effective two (2) days after service upon the tenants.

Based upon the unopposed evidence before me, I find the landlord entitled to recover from the tenants the unpaid rent and/or loss of rent for the months up to and including the month of December 2022 as requested.

Upon review of the tenancy agreement, I accept that the landlord is entitled to charge the tenants a \$20.00 NSF fee and the fee is compliant with section 7 of the Residential Tenancy Regulations.

In light of the above, I grant the landlord's request to recover unpaid and/or loss of rent and the NSF fees in the sum of \$5900.00 as seen in the landlord's ledger for months up to and including December 2022.

Should the landlord seek recovery of loss of rent for subsequent months the landlord may make another Application for Dispute Resolution.

I authorize the landlord to retain the tenant's \$1095.00 security deposit in partial satisfaction of the rent owed to the landlord. I also award the landlord recovery of the \$100.00 filing fee paid for this application.

In light of the above, the landlord is provided a Monetary Order to serve and enforce upon the tenants, calculated as follows:

Rent and NSF fees, per ledger, up to December 2022	\$5900.00
Plus: filing fee	100.00
Less: security deposit	<u>(1095.00)</u>
Monetary Order	\$4905.00

Conclusion

The landlord is provided an Order of Possession effective two (2) days after service.

The landlord is authorized to retain the tenant's security deposit and is provided a Monetary Order for the balance owing of \$4905.00.

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: March 03, 2023

Residential Tenancy Branch