



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

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A matter regarding Orange Penguin Holdings Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OPR MNRL FFL

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 seeks an order requiring the payment of unpaid rent, pursuant to section 55(4)(b) of the Act.

The Landlord seeks an order that the Tenant pay the cost of the Landlord’s application fee, pursuant to section 72(1) of the Act.

Preliminary Issue: Service of Notice of Dispute Resolution Proceeding

Landlord’s counsel made submissions regarding both the service of the Notice of Dispute Resolution Proceeding and in respect of the application itself. The corporate Landlord’s agent affirmed that counsel’s submissions may be considered testimony and therefore evidence of the issues and facts herein.

Counsel testified that the Tenant was served with the Notice of Dispute Resolution Proceeding by registered mail. Documentary evidence, including receipts and tracking information, was provided. The evidence persuades me to find that the Tenant was served in accordance with the Act and the Rules of Procedure, notwithstanding the Tenant’s attempt to avoid service. As such, the Tenant was served with the required paperwork necessary for them to participate in the hearing, which they did not.

Issues

1. Is the Landlord entitled to an order of possession?
2. Is the Landlord entitled to an order for the payment of unpaid rent?
3. Is the Landlord entitled to an order for the cost of the application fee?

Background and Evidence

The tenancy began on April 15, 2015. Rent, due on the first day of the month, is \$1,500. The Tenant paid a \$725 security deposit. A copy of a tenancy agreement is in evidence. To the best of the Landlord's knowledge the Tenant continues to occupy the rental unit.

Landlord's counsel testified that the Landlord served a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") on September 8, 2022. Service was by way of the Notice being attached to the door of the rental unit. A copy of the Notice was in evidence.

Counsel confirmed that the Notice was given because the Tenant failed to pay rent in the amount of \$7,500 that was due on September 1, 2022. At that point, the Tenant had not paid any rent since May 2022. As of March 1, 2023 rent arrears are \$16,500.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold the rent. Section 46(1) of the Act allows landlords to end a tenancy if the tenant does not pay rent by issuing a 10 Day Notice to End Tenancy for Unpaid Rent.

The Landlord's evidence proves that the Tenant failed to pay any rent since May 2022, and they did not pay rent on September 1, 2022, resulting in the issuing of the Notice. Further, the Landlord's evidence persuades me to find, on a balance of probabilities, that the Tenant currently owes \$16,500 in unpaid rent. The Tenant has not paid any rent since the Notice was given, nor has the Tenant disputed the Notice.

Section 55(2)(b) of the Act states that a landlord may request an order of possession when a notice to end the tenancy was given, the tenant has not disputed the notice, and the time for making any application to dispute the notice has expired.

In this dispute, because the Tenant has not disputed the Notice and the time for making any such application has long since expired, the Landlord is, pursuant to section 55(4)(a) of the Act, granted an order of possession. A copy of the order of possession is issued with this decision to the Landlord, and the Landlord must serve a copy of the order of possession upon the Tenant.

Pursuant to section 55(4)(b) of the Act the Landlord is granted an order requiring the payment of rent in the amount of \$16,500. Further, the Landlord is also granted an order requiring the Tenant to pay the cost of the Landlord's \$100 application fee, pursuant to section 72(1) of the Act. In total, the Tenant is ordered to pay \$16,600 to the Landlord.

Pursuant to section 38(4)(b) of the Act, the Landlord is authorized and permitted to retain the Tenant's \$725 security deposit in partial satisfaction of the above amount.

The balance of the amount (\$15,875) is entered into a monetary order which is issued to the Landlord in conjunction with this decision. The Landlord must serve a copy of the monetary order upon the Tenant within 15 days of receiving a copy of this decision.

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: March 13, 2023

Residential Tenancy Branch