



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL

Introduction

The Landlord applied for dispute resolution (“Application”) by way of an *ex parte* Direct Request Proceeding under section 55(4) of the *Residential Tenancy Act* (the “Act”). The Landlord requests an Order of Possession, a Monetary Order for unpaid rent and authorization to recover the filing fee for their Application from the Tenant.

During the Direct Request Proceeding it was determined by the Adjudicator that the written tenancy agreement (“Tenancy Agreement”) did not specify the day of the month on which rent was due. Therefore, it was not possible to determine if or when rent was late and if the 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) issued by the Landlord was valid.

As a result, it was ordered that the proceeding be adjourned and reconvened as participatory hearing under section 74 of the Act.

The Landlord attended the hearing with their son, M.L., and wife, C.L. The Landlord requested that M.L. speak on their behalf. The Tenant’s daughter, M.T. and son, T.T. attended for the Tenant. All parties affirmed to tell the truth during proceedings and were given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

M.L. testified that the Notice of Dispute Resolution Package (“Materials”) was served on the Tenant via registered mail on February 24, 2023. A copy of the envelope the Materials were sent to the Tenant in was provided as evidence by the Landlord.

Therefore, I find that pursuant to section 89 of the Act that the Landlord's Materials were sufficiently served to the Tenant. The registered mail tracking number is displayed on the envelope and is included on the front page of this Decision.

Preliminary Issue: Service of Tenant's Evidence

Written statements from the Tenant and their Advocates, M.T. and T.T., and an audio recording were entered into evidence by the Tenant. M.T. confirmed they were not sure if the evidence had been served onto the Landlord. The Landlord confirmed they did not receive any evidence from the Tenant.

Therefore, I find on the balance of probabilities that the Tenant's evidence was not served on the Landlord. I therefore exclude the Tenant's evidence from consideration in accordance with rule 3.15 of the *Rules of Procedure* which states that the respondent must serve evidence they intend to rely on to the applicant.

Preliminary Issue: Style of Cause

The Landlord listed B.T., M.T. and J.M. as respondents. B.T. and J.M. are the parents of M.T. and T.T. During the hearing, parties agreed that B.T. is the only Tenant listed on the Tenancy Agreement. A copy of the Tenancy Agreement was entered into evidence by the Landlord which lists B.T. as the sole tenant. M.L. testified that the Landlord rented to B.T. only and they had no agreement with the other occupants. Rent was paid by B.T. only.

As parties have confirmed only B.T. is a Tenant, I exercise my authority under Section 62(2) of the Act to amend the Application to remove M.T. and J.M. as respondents. The Style of Cause for this Decision has been amended to reflect this.

Issues to be Decided

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 filing fee for the Application from the Tenant?

Background and Evidence

The attending parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

Parties agreed that the tenancy started on July 15, 2021 with rent of \$1,680.00 per month. Though the date on which rent was due was not specified on the Tenancy Agreement, parties agreed it was due on the first day of the month. The Tenant paid a security deposit of \$840.00 which the Landlord still holds.

M.L. confirmed that rent was last paid in September 2022 and they had made multiple request for rent payment. The Notice was served by attaching to the door of the rental unit on December 8, 2022.

M.L. testified that the locks on the rental unit have been changed by the Tenant or an occupant of the rental unit, so they are unable to check for certain if the unit is occupied. Last week they went past the rental unit and saw lights on so believe the unit is still being occupied. Presently six months rent is now outstanding and the total balance for undue rent is \$10,080.00.

M.T. stated they had vacated the rental unit on September 26, 2022 and that their and T.T.'s mother, J.M., was still occupying the rental unit at that time. M.T. testified they had tried to remove J.M. from the rental unit themselves but was unsuccessful. M.T. was not sure if J.M. was still occupying the rental unit as the two parties had not been in contact since October 2022.

T.T. stated they had initially lived in the rental unit but vacated it in September 2021. They stated they had also tried to convince their mother, J.M., to leave the rental unit without success. T.T. confirmed their father, B.T., did not reside in the rental unit at any time.

Analysis

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some, or all, of the rent. Section 16 of the Act states that a tenant's obligations under the Act take effect from the date the tenancy agreement is entered

into, whether or not the tenant ever occupies the rental unit. Additionally, section 46(1) of the Act allows a landlord to end a tenancy if the tenant does not pay rent on time by issuing a 10 Day Notice to End Tenancy for Unpaid Rent.

I accept the Landlord's undisputed testimony that rent due October 1, 2022 was not paid by the Tenant. Therefore, I find on a balance of probabilities that the Notice was given for a valid reason, namely, the non-payment of rent. I also find that the Notice complies with the form and content requirements of section 52 of the Act.

The Notice was served on December 8, 2022 by attaching to the door of the rental unit, therefore would have been deemed received on December 11, 2022, the third day after it is attached in accordance with section 90 of the Act.

I accept the Landlord's undisputed testimony that the outstanding rent was not paid in full within five days of the Tenant receiving the Notice. Had this been done it would have meant the Notice has no effect in accordance with section 46(4)(a). Additionally, there is no record of the Tenant disputing the Notice. Therefore, under section 46(5) of the Act, the Tenant is presumed to have accepted the Notice.

Based on the above findings, the Landlord is granted an Order of Possession pursuant to section 55(2)(b) of the Act. A copy of the Order of Possession is attached to this Decision and must be served on the Tenant. The Tenant has two days to vacate the rental unit from the date of service or deemed service. I find that the Tenancy ended on December 21, 2022.

The Landlord is entitled to an order for unpaid rent under section 55(4) of the Act. Therefore, the Tenant is ordered to pay \$10,080.00 in unpaid rent to the Landlord.

As the Landlord has been successful in their Application, I authorize the Tenant to pay the Landlord the amount of \$100.00 in respect of the filing fee in accordance with section 72 of the Act.

The Landlord testified they retain a security deposit of \$840.00. Under section 38(4)(b) of the Act, the Landlord is ordered to retain the security deposit in partial satisfaction of the Payment Order.

The Monetary Order is summarized below:

Item	Amount
Unpaid rent	\$10,080.00
Filing fee	\$100.00
Less: security deposit	(\$840.00)
Total	\$9,340.00

Conclusion

The Application is granted.

The Landlord is issued an **Order of Possession**.

The Landlord is Issued a **Monetary Order** for unpaid rent.

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 21, 2023

Residential Tenancy Branch