



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OPR-DR, FFL

Introduction

The Landlord seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- an order of possession pursuant to s. 55 after issuing a 10-Day Notice to End Tenancy signed on February 6, 2023 (the “10-Day Notice”); and
- return of the filing fee pursuant to s. 72.

E.B. appeared as the Landlord’s agent.

The Landlord’s agent affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlord’s agent advises that the Landlord’s application and evidence were served on the Tenant via registered mail sent on March 21, 2023. I am provided with a copy of the registered mail tracking receipt as proof of service. I find that the Landlord has served its application materials in accordance with s. 89 of the *Act*. Pursuant to s. 90 of the *Act*, I deem that the Tenant received the Landlord’s application materials on March 26, 2023.

Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Tenant did not attend the hearing, it was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure.

Issue(s) to be Decided

- 1) Is the Landlord entitled to an order of possession?
- 2) Is the Landlord entitled to its filing fee?

Evidence and Analysis

The parties were given an opportunity to present evidence and make submissions. I have reviewed all included written and oral evidence provided to me by the parties and I have considered all applicable sections of the *Act*. However, only the evidence and issues relevant to the claims in dispute will be referenced in this decision.

The Landlord's agent confirms the following details with respect to the tenancy:

- The Tenant first moved into the rental unit as a roommate but took on the tenancy in or about January 2021.
- Rent of \$1,015.00 was due on the first of each month, though this was increased on March 1, 2023.
- A security deposit of \$425.00 was paid to the Landlord.

I am provided with a copy of the tenancy agreement from the previous tenancy. The Landlord's agent advises that there is no written tenancy agreement. Review of the documents show the rental unit is in a manufacture home park. The Landlord's agent confirms it is but advises that the manufactured home is owned by the Landlord and rented to the Tenant as a rental unit. I accept that this is the case and that the *Act* applies.

Pursuant to s. 46(1) of the *Act*, where a tenant fails to pay rent when it is due, a landlord may elect to end the tenancy by issuing a notice to end tenancy that is effective no sooner than 10-days after it is received by the tenant.

The Landlord's agent advises that the 10-Day Notice was posted to the Tenants' door on February 6, 2023. I am provided a photograph and signed proof of service confirming this. I find that the 10-Day Notice was posted to the Tenant's door on February 6, 2023 in accordance with s. 88 of the *Act*. Pursuant to s. 90 of the *Act*, I deem that the Tenant received the 10-Day Notice on February 9, 2023.

I am provided with a copy of the 10-Day Notice, which lists arrears of \$5,400.00 owed as of February 6, 2023. I enquired if the Tenant made payment on this amount. The Landlord's agent advises that the Tenant did pay \$5,400.00 to the Landlord spread out over three payments made on February 6th, 10th, and 12th. However, the agent tells me that the Landlord discovered there were additional arrears of \$1,595.00 that ought to have been included in the 10-Day Notice. I am told the Landlord advised the Tenant of the same on February 14, 2023 but that this payment was not made.

Pursuant to s. 46(4) of the *Act*, a tenant has 5-days from receiving a 10-day notice to end tenancy to either pay the overdue rent or file an application to dispute the notice. In this instance, I find that the Tenant did pay the arrears listed in the 10-Day Notice on February 12, 2023, which is within 5 days of its receipt on February 9, 2023. Upon paying the overdue rent listed in the 10-Day Notice, it was automatically rendered ineffective by application of s. 46(4) of the *Act*.

The Landlord's agent mentions that additional arrears ought to have been included in the 10-Day Notice. However, the fact is that the 10-Day Notice says \$5,400.00. It did not include the additional \$1,595.00 that was missed by the Landlord. The Landlord's error in issuing the notice cannot be corrected by simply continuing to pursue its enforcement.

Further, I do not find it appropriate to apply s. 68 of the *Act* to amend the notice. Technically, this is not an error with respect to the requirements set by s. 52 on the form and content of the notice. The amount listed as unpaid rent is fundamental to the notice itself. To permit the inclusion of the additional amount after the 10-Day Notice was served amounts to moving the goal posts on the Tenant in a manner that is inconsistent with the protective purpose of the *Act*. The Tenant received notice of the arrears. The Tenant paid the arrears she was given notice of in the time permitted to her under the *Act*. The 10-Day Notice is of no effect.

I find that the 10-Day Notice was of no force or effect upon receipt of the \$5,400.00 arrears on February 12, 2023. Accordingly, I dismiss the Landlord's application for an order of possession pursuant to the 10-Day Notice without leave to reapply. The tenancy shall continue until it is ended in accordance with the *Act*.

Conclusion

I dismiss without leave to reapply the Landlord's application pursuant to s. 55 of the *Act* for an order of possession after issuing the 10-Day Notice. The tenancy shall continue until it is ended in accordance with the *Act*.

As the Landlord was unsuccessful, I find it is not entitled to its filing fee. The Landlord's claim under s. 72 of the *Act* for the filing fee is dismissed without leave to reapply.

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: April 28, 2023