



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing was scheduled pursuant to the *Residential Tenancy Act* (the Act) in response to a successful application filed by the tenant for review of a decision dated March 14, 2023. In the original decision issued by way of a Direct Request Proceeding, the landlord was granted an order of possession and a monetary order in the amount of \$1600.00 for unpaid rent. The original decision and orders were subsequently suspended by way of a review consideration decision dated March 21, 2023 pending the outcome of this review hearing.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

Issues

Should the original decision and order dated March 14, 2023 be confirmed, varied or set aside in relation to each of the following:

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary award for unpaid rent?

Background and Evidence

This tenancy originally began on January 1, 2018. The original lease was with H.D. and the monthly rent was \$1300.00. All though the original lease was a month-to-month lease, over the years the parties entered new lease agreements on a yearly basis sometimes at the same rent, sometimes at a new agreed upon rent. In 2020, the lease was switched to the tenant's son's name. The latest lease was entered into on December 26, 2022 with a start date of January 1, 2023 and was for a one year fixed term. This lease went back into the name of the original tenant H.D. The lease stipulated a monthly rent of \$1600.00 payable on the 1st day of each month.

The landlord testified that on January 2, 2023, the tenant was served with a 10 day Notice to End Tenancy for unpaid rent by posting a copy to the door of the rental premises. The Notice indicates that the tenant failed to pay rent in the amount of \$1600.00 that was due on January 1, 2023. The 10 Day Notice provides that the tenant had five days from the date of service to pay the outstanding rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective date of the Notice.

The landlord testified the outstanding rent was not paid within 5 days and no rent has been paid since. The landlord is claiming outstanding rent for January, February and March 2023 in the total amount of \$4800.00. The parties confirmed that the landlord obtained possession of the rental unit on March 22, 2023.

The tenant acknowledged receipt of the 10 Day Notice and that the full amount of the rent arrears indicated on the Notice was not paid within five days of receiving the Notice. The tenant confirmed that no rent was paid for January, February or March 2023. The tenant submits that they were willing to pay the rent as per the previous lease with K.D. before the December 26, 2022, lease renewal. The tenant submits this was an illegal rent increase. The tenant submits that they were in the process of filing an application to dispute the 10 Day Notice but after being served with the landlord's Notice of Direct Request Proceeding, they withdrew their application. The tenant submits they could not properly respond to the landlord's application as the file# had been blacked out on the Notice.

In reply, the landlord submits the tenant did not even pay the original lease amount which they could have easily paid by e-transfer, which is how they paid rent in the past, even if they were disputing the new lease amount.

Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If, as in the present case, the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the 10 Day Notice.

I am satisfied that the tenant was served with the 10 Day Notice on January 5, 2023, three days after its posting, pursuant to sections 88 & 90 of the Act. The tenant would have had until January 10, 2023 to pay the outstanding amount as per the 10 Day Notice or file an application to dispute the Notice which the tenant failed to do. I dismiss the tenant's argument that they thought they were just to respond to the landlord's Direct Request Proceeding application. A Direct Request Proceeding is not a participatory hearing process in which the tenant could have participated or submitted evidence. Accordingly, the tenant's review application based upon a "access code" being blacked out should not have been granted. The tenant should have filed its own application to dispute the 10 Day Notice within the permitted timelines. Additionally, if the tenant was disputing the new lease amount, the tenant should have at the very least paid the original lease amount.

I find that the 10 Day Notice complies with the requirements of Section 52 of the Act, accordingly, the landlord is granted an Order of Possession pursuant to section 55 of the Act.

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I find the tenant H.D. entered into a new lease on December 26, 2022, and the tenant is bound by the terms of this lease. There was no evidence that the tenant signed the lease under duress.

I find that the tenant was obligated to pay monthly rent in the amount of \$1600.00 but failed to pay rent for the months of January, February and March 2023. I accept the landlord's claim for outstanding rent of \$4800.00. As the landlord has already been granted a monetary order for January 2023 rent, the landlord is entitled to an additional monetary award in the amount of \$3200.00 for unpaid February and March 2023 rent.

Conclusion

The decision, Order of possession and Monetary Order dated March 14, 2023 are hereby confirmed.

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$3200.00. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: May 09, 2023

Residential Tenancy Branch