



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”) and seeks an Order of Possession on an undisputed 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) under section 55(2)(b) of the *Residential Tenancy Act* (the “Act”). They are also seeking to recover unpaid rent under sections 26 and 67 of the Act, and the cost of the filing fee under section 72 of the Act.

The Applicant Landlord called into this teleconference at the date and time set for the hearing of this matter. The Landlord affirmed to tell the truth during the hearing and was given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions. Although I waited until 1:48 P.M. to enable the Respondent Tenant to connect with this teleconference hearing scheduled for 1:30 P.M., the Tenant did not attend.

I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. During the hearing, I also confirmed from the online teleconference system that the Landlord and I were the only parties who had called into this teleconference. Rule 7.3 of the *Rules of Procedure* allows a hearing to continue in the absence of the respondent so the hearing continued without the Tenant.

The Landlord testified they served the Notice of Dispute Resolution Package (“Materials”) on the Tenant by registered mail on April 18, 2023. The Landlord entered into evidence the tracking number and a copy of the receipt. The tracking number is provided on the first page of this Decision.

In light of the above evidence from the Landlord, I find that pursuant to section 89 of the Act, the Landlord's Materials were sufficiently served to the Tenant.

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 party was 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.

The Landlord confirmed the following regarding the tenancy:

- The tenancy started on March 15, 2022.
- Rent was initially \$3,600.00 per month due on the fifteenth day of the month, though as of August 15, 2022 the Landlord agreed to lower rent to \$2,800.00 per month.
- The Landlord does not hold a security deposit.
- There is a written tenancy agreement which was entered into evidence by the Landlord.
- The Tenant still occupies the rental unit.

The Landlord testified as follows. The Tenant was continuously late with rent and paid in a piecemeal fashion. They tried to work with the Tenant and find a solution, but eventually they found they could not continue as things were. They served the Notice to the Tenant on March 23, 2023 by attaching to the door of the rental unit.

A copy of the Notice was entered into evidence by the Landlord. It is signed March 23, 2023 and provides for outstanding rent of \$11,200.00 as of March 15, 2023. The effective date on the Notice is April 5, 2023. The address of the rental unit provided on the Notice is completely different to that on the Application. The Landlord stated that they made a typographical error on the Notice and entered their own address.

The Landlord stated that as of May 15, 2023, the Tenant owes \$14,000.00 in outstanding rent.

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. 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.

Section 52 of the Act sets out the form and content requirements that a Notice to End Tenancy must meet to be effective. Section 52(b) of the Act states that the address of the rental unit must be given on a Notice to End Tenancy.

I find the Notice provides an incorrect address for the rental unit. During the hearing the Landlord confirmed this was due to a typographical error and the Landlord's own address had been included instead of the address of the rental unit. I find this error means the Notice does not comply with section 52 of the Act and is therefore defective. I order the 10 Day Notice to End Tenancy dated March 23, 2023 is of no force or effect.

The Application is dismissed without leave to reapply and the tenancy continues.

As the Landlord's Application was not successful, they must bear the cost of the filing fee.

Conclusion

The Application 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 Act.

Dated: May 23, 2023

Residential Tenancy Branch