

DECISION

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) under sections 46 and 55 of the Act.

It also dealt with the Landlord's Application for Dispute Resolution under the Act for:

- an Order of Possession based on a 10 Day Notice under sections 46 and 55 of the Act,
- a Monetary Order for unpaid rent under section 67 of the Act, and
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act.

Landlord M.S. attended the hearing for the Landlord.

No one attended the hearing for the Tenant.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The Landlord sent the Proceeding Package via registered mail to the Tenant on June 14, 2024, to the rental unit's address. The tracking number is on the cover page of this decision. Tracking information for the package shows it was available for pickup as of June 17, 2024.

Based on the Landlord's testimony, and considering the tracking number, I find the Landlord proved that they served the Tenant in accordance with section 89(1).

Section 90(a) of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed.

I deem the Tenant received the Proceeding Package on June 19, 2024, per section 90(a) of the Act.

There is no evidence or testimony showing how the Tenant served their Proceeding Package.

Under rule 3.5, an applicant must be prepared to demonstrate service to director's satisfaction. It also allows an arbitrator to dismiss an application with or without leave to reapply if the applicant fails to demonstrate service of their Proceeding Package.

In the absence of evidence regarding service of the Tenant's Proceeding Package, I find that it was not served. The Tenant's application is dismissed without leave to reapply.

Service of Evidence

The Landlord testified that their evidence was served in the same package as their Proceeding Package.

Based on the submissions before me, I find that the landlord's evidence was served to the tenant by registered mail per section 88 (1)(c) of the Act.

For the same reasons as I found the Landlord's Proceeding Package served on June 19, 2024, I also find their evidence was served on June 19, 2024.

The Tenant provided no evidence showing they served their evidence.

Based on the evidence before me, I find that the tenant's evidence was not served to the landlord in accordance with section 88 of the Act and therefore I will not consider it.

Preliminary Matters

Several amendments were made to this application at the hearing.

First at the hearing it came out that several of the Tenants listed as Tenant's application were not in fact tenants. The only actual tenant per the tenancy agreement was S.J.P. The Landlord confirmed this was the case at the hearing.

Another similar issue was that the Landlord's name was misspelled on the Tenant's application.

Rule 7.12, of the Rules, allows arbitrators to grant amendments at a hearing when the amendment arises from circumstances that can reasonably be anticipated.

I find the Tenant reasonably should have known who signed the tenancy agreement and should have known the Landlord's name from the 10 Day Notice.

Per rule 7.12 I amend the application to incorporate these changes (the correct information is on the cover page).

Issues to be Decided

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to a Monetary Order for unpaid rent?

Is the Landlord entitled to recover the filing fee for this application from the Tenant?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

At the hearing Landlord gave the following information about the tenancy, which is also in the Tenant's application:

- rent of \$5,500.00 was due on the first day of the month,
- the Landlord holds \$5,500.00 for the security and pet deposits, \$2,750.00 per deposit.

The Landlord submitted a tenancy agreement which states the security and pet damage deposit should be paid to them on October 15, 2023.

At the hearing, the Landlord said the Tenant did not pay rent for June 1, 2024. The Landlord provided a 10 Day Notice, and a proof of service for the 10 Day Notice that make the same claim.

At the hearing, the Landlord said that the Tenant and all the occupants had vacated the rental unit as of June 30, 2024.

Analysis

Is the Landlord entitled to an Order of Possession?

At the hearing, the Landlord stated the Tenant had vacated the rental unit on June 30, 2024. They stated that since they had full possession of the rental unit an Order of Possession was no longer necessary.

I find the issue of the Landlord's claim for an order of possession is moot since they have taken back possession of the rental unit, For this reason I have dismissed the Landlord's claim under s. 55 of the Act, without leave to reapply.

Is the Landlord entitled to a Monetary Order for unpaid rent?

Section 67 of the Act states that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Section 26 of the Act states that a tenant must pay rent to the landlord, regardless of whether the landlord complies with the Act, regulations, or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the Act.

Both parties have submitted that rent is \$5,500.00 due on the first of the month.

Based on the Landlord's uncontradicted testimony, and their evidence they sent the Tenant a 10 Day Notice making the same claim, I find the Tenant did not pay rent for June 1, 2024. I find that the Tenant owed the Landlord \$5,500.00 in rent and that the Tenants' failure to pay rent constituted a breach of their obligation to do so under the tenancy agreement and s. 26 of the Act.

Therefore, I find the Landlord is entitled to a Monetary Order for unpaid rent under section 67 of the Act, in the amount of \$5,500.00. The Landlord continues to hold the tenant's security deposit of \$5,500.00 in trust. In accordance with the off-setting provisions of section 72 of the Act, I order the Landlord to retain the Tenant's security deposit and pet damage deposit in satisfaction of the monetary order. Based on the tenancy agreement, I find the deposits were given to the Landlord on October 15, 2023.

I find that the Tenant is owed interest on the security deposit and pet damage deposit in the amount of \$102.85.

2023 \$5500.00: \$22.92 interest owing (1.95% rate for 21.37% of year)

2024 \$5500.00: \$79.93 interest owing (2.7% rate for 53.83% of year)

Is the Landlord entitled to recover the filing fee for this application from the Tenant?

As the Landlord was successful in this dispute, I find that the Landlord is entitled to recover the \$100.00 filing fee paid to apply, per section 72 of the Act.

As previously indicated, the Landlord continues to hold a security deposit in the amount of \$102.85 with respect to the accrued interest on the Tenant's original security deposit. In accordance with the off-setting provisions of section 72 of the Act, I order the Landlord to retain \$100.00 from the Tenant's security deposit in satisfaction of this monetary order.

Conclusion

I dismiss the Tenant's application to cancel the 10 Day Notice, and the Landlord's claim for an order of possession pursuant to the 10 Day Notice, without leave to reapply.

I order the Landlord to retain \$5,500.00 from the Tenant's security deposit and pet damage deposit in satisfaction of the Monetary Order for unpaid rent.

I order the Landlord to retain \$100.00 from the Tenant's security deposit and pet damage deposit in satisfaction of the Monetary Order for recovery of their \$100.00 filing fee.

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: July 17, 2024

Residential Tenancy Branch