



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPU-DR, FF

Introduction

On December 3, 2019 a hearing was conducted via between these two parties. The landlord served the tenant in person on September 28, 2019 with the notice of hearing package and supporting documents for a request seeking an order of possession and a monetary order for recovery of the filing fee. The landlord was granted an order of possession and a monetary order for \$100.00. The tenant applied for a review of this decision. The arbitrator suspended the order of possession and the monetary order pending a review hearing for the landlords' application.

This is a review hearing granted for the landlords' application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for unpaid rent pursuant to section 55;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided testimony. Both parties confirmed that the tenant failed to serve a copy of the Review Decision and the notice of a review hearing letter to the landlord. The tenant's agent (the tenant) stated that the landlord was verbally notified of the hearing details. The landlord's agent (the landlord) disputed this stating that he was first notified of a hearing via an email reminder message from the Residential Tenancy Branch (RTB). The landlord stated upon receipt of this email he contacted the RTB for the details regarding this email and was informed of a review hearing. The landlord stated that he was provided with a copy of the Review Decision and Notice of a Review Hearing letter. Extensive discussions took place with both parties which resulted in the landlord confirming that he was aware of the issues based upon the landlord's original application for dispute and was ready to

proceed with the hearing. The tenant confirmed that no documentary evidence was submitted.

On this basis, I find that both parties have been sufficiently served with notice of the review hearing and are deemed served as per section 90 of the Act.

Issue(s) to be Decided

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

Is the landlord entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on August 1, 2019 on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated August 1, 2019. The monthly rent is \$2,500.00 payable on the 1st day of each month and a security deposit of \$600.00 was paid on August 1, 2019.

The landlord seeks an order of possession for unpaid rent based upon a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated November 9, 2019 which was served in person on November 9, 2019. It states in part that the tenant failed to pay rent of \$6,400.00 that was due on November 1, 2019 and provides for an effective end of tenancy date of November 19, 2019. A written notation state, "for 4 months". The landlord clarified that the unpaid rent was for the period August, September, October and November of 2019. The landlord stated that the \$6,400.00 represents the remaining unpaid rent after the tenant paid \$1,250.00 in August and \$1,500.00 in October. The landlord confirmed that monthly rent is \$2,500.00 but was unable to clarify how 4 months of rent at \$2,500.00 would equal \$6,400.00 after receiving two rent payments totalling, \$2,250.00. The landlord was advised that 4 months of unpaid rent at \$2,500.00 equalled, \$10,000.00, minus \$6,400.00 in unpaid rent leaves, \$3,600.00. A further deduction for two partial rent payments totalling, \$2,250.00 (one payment of \$1,250.00 and one payment of \$1,500.00) would leave a remaining balance of \$850.00. The landlord repeatedly argued that the total owed of \$6,400.00 was accurate but was unable to provide any further details of the discrepancy.

The tenant argued that the 10 Day Notice was not served by the landlord to the tenant. The landlord argued that it was served in person to the tenant but was unable to provide a date for the service. The landlord instead stated that the 10 Day Notice was served to the tenant in person and relies upon the documentary evidence submitted named, "videoproof (IMG_7581.TRIM).MOV" as proof of service. The tenant disputed this claim. The landlord then stated that the tenant's sister E. was the person served with the 10 Day Notice. A review of the video file revealed that no actual video of the service was apparent. Both parties were advised that the only video viewable was of a set of legs. The landlord clarified that the service was recorded on the audio at the beginning of the video. A review of the audio portion of this video revealed the landlord stating that he was serving the 10 Day Notice to the person at the door for unpaid rent. The landlord then clarified that the person at the door was the tenant's sister, E. The tenant, E. then confirmed that she was served with the 10 Day Notice. The tenant repeatedly argued that rent was paid in cash and the landlord has never issued any receipts for the rent payments.

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

In this case, I find based upon the evidence provided by both parties that I am satisfied on a balance of probabilities that the landlord served the tenant's sister with the 10 Day Notice as claimed. This is supported in part by the audio portion of the video file submitted by the landlord. However, I find that the landlord's 10 Day Notice dated November 9, 2019 is "flawed". It provides that the tenant failed to pay rent of \$6,400.00 in unpaid rent and as clarified by the landlord this was for rental arrears for a 4 month period. The landlord was unable to provide clarification over the discrepancy. The landlord confirmed that monthly rent is \$2,500.00 and for a 4 month period was a total of \$10,000.00. The combined unpaid rent of \$6,400.00 (as per the 10 Day Notice and the landlord) does not equate to the remaining arrears based upon the landlord's evidence that the tenant made partial rental payments of \$2,250.00 (one payment of \$1,250.00 and one payment of \$1,500.00). This would leave a difference of \$1,350.00. The landlord did not submit any further evidence to clarify this discrepancy, nor did the landlord offer an explanation. I find based upon this discrepancy that the landlord's 10 Day Notice is cancelled. The tenancy shall continue.

Conclusion

The landlord's 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 *Residential Tenancy Act*.

Dated: February 28, 2020

Residential Tenancy Branch