



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, OPRM-DR, OPR-DR

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- an order of possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent in the amount of \$5,080 pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

This hearing was reconvened from a non-participatory direct request proceeded by way of an interim order dated October 28, 2020.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:48 am in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 am. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord testified he served that the tenant with a copy of the interim decision, the notice of reconvened hearing, the supporting evidence package, and all other required documents via registered mail on October 29, 2020. He testified he served the tenant with a copy of his amendment to the application (increasing the amount of the monetary claim to reflect further rental arrears) on December 16, 2020. He provided Canada Post tracking numbers confirming these mailings which are reproduced on the cover of this decision. I find that the tenant was deemed served with these packages on November 3, 2020 and December 21, 2020 respectively, five days after the landlord mailed them, in accordance with sections 88, 89, and 90 of the Act.

Preliminary Issue – Spelling of Landlord's Name

The landlord advised me that his surname was incorrectly spelled on the application. He provided the correct spelling (recorded on the cover of this decision). I order that the application be amended to reflect the correct spelling.

Issues to be Decided

Is the landlord entitled to:

- 1) an order of possession;
- 2) a monetary order for \$5,080; and
- 3) recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the landlord, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The parties entered into a written, fixed term tenancy agreement starting June 1, 2019 and ending on June 1, 2020. Monthly rent was \$1,100 and was payable on the first of each month. The tenant paid the landlord a security deposit of \$550 which the landlord continues to hold in trust. At the end of the fixed term, the parties renewed the tenancy agreement for another one-year term. Monthly rent was increased to \$1,130. The landlord requested an additional \$15 in security deposit to reflect this increase, but the tenant did not provide it to him.

The landlord testified that the tenant has failed to pay the full amount of rent owing every month since April 2020. On September 8, 2020, the landlord sent a 10 Day Notice to End Tenancy (the "**Notice**") to the tenant via registered mail. He provided a Canada Post tracking number confirming this mailing (reproduced on the cover of this decision). It specified an effective date of September 23, 2020 and that the tenant was \$2,020 in arrears. The landlord testified that the tenant did not pay any amount of arrears owed after receiving the Notice and did not file an application to dispute the Notice.

The landlord testified that the tenant was in arrears as follows:

Date	Rent Due	Rent Paid	Balance Due
01-Apr-20	\$1,100		\$1,100
06-Apr-20		\$600	\$500
01-May-20	\$1,100		\$1,600
04-May-20		\$600	\$1,000
01-Jun-20	\$1,130		\$2,130
04-Jun-20		\$1,000	\$1,130
01-Jul-20	\$1,130		\$2,260
02-Jul-20		\$500	\$1,760
03-Jul-20		\$500	\$1,260
01-Aug-20	\$1,130		\$2,390
04-Aug-20		\$1,000	\$1,390
01-Sep-20	\$1,130		\$2,520

02-Sep-20		\$500	\$2,020
01-Oct-20	\$1,130		\$3,150
05-Oct-20		\$500	\$2,650
01-Nov-20	\$1,130		\$3,780
02-Nov-20		\$600	\$3,180
03-Nov-20		\$500	\$2,680
01-Dec-20	\$1,130		\$3,810
01-Jan-21	\$1,130		\$4,940
		Total Arrears	\$4,940

The landlord provided copies of transaction history statement from his bank confirming these payments.

Analysis

1. Order of Possession

Based on the evidence presented at the hearing, I find that the tenant was served with the Notice on September 13, 2020 (five days after it was sent by registered mail).

Sections 46(4) and (5) of the Act states:

Landlord's notice: non-payment of rent

46(4) Within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect, or
- (b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit to which the notice relates by that date.

As the Notice is deemed served on September 13, 2020, the tenant must either pay the arrears or dispute the Notice by September 18, 2020. The tenant did neither of these.

I find that the Notice complies with the form and content requirements of section 52. As such, I find that the tenancy is conclusively presumed to have ended on the effective date of the Notice, September 23, 2020.

Accordingly, I issue the landlord an order of possession effective two days after the landlord serves it on the tenant at 1:00 pm.

2. Monetary Order

Based on the evidence provided by the landlord, I find that the tenant is \$4,940 in rental arrears, and not, as claimed by the landlord on his application, \$5,080 in arrears. I understand that part of this discrepancy is due to the landlord including the cost of filing the application (\$100) in his calculation of arrears, but the landlord could not explain the further \$40 discrepancy.

Section 26(1) of the Act requires that a tenant pay rent when it is due. The tenant failed to do this. As such, I order that the tenant pay the landlord the full amount of arrears owed (\$4,940).

I note that, as the tenancy is ending, there is no requirement for the landlord to provide a repayment plan to the tenant per *COVID-19 (Residential Tenancy Act and Manufactured Home Park Tenancy Act) (No. 2) Regulation*.

Pursuant to section 72(1) of the Act, as the landlord has been successful in the application, he may recover their filing fee from the tenant.

Pursuant to section 72(2) of the Act, the landlord may retain the security deposit in partial satisfaction of the monetary orders made above.

Conclusion

Pursuant to sections 67 and 72 of the Act, I order that the tenant pay the landlord \$4,490, representing the following:

Rent Arrears	\$4,940
Filing Fee	\$100
Security Deposit Credit	-\$550
Total	\$4,490

Pursuant to section 55 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlord within two days of being served with a copy of this decision and attached orders by the landlord at 1:00 pm.

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: January 15, 2021

Residential Tenancy Branch