



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, OPRM-DR, FFL

Introduction

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

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The landlord attended the hearing via conference call and provided undisputed affirmed testimony. The tenant did not attend or submit any documentary evidence.

Extensive discussions over a 28 minute period resulted in the landlord providing direct testimony that the tenant was served with the notice of Reconvened Hearing and the Interim Decision dated January 7, 2021 in person on January 8, 2021. I accept the undisputed affirmed direct testimony of the landlord and find that the tenant was properly served as per sections 89 of the Act.

The landlord confirmed that 3 documentary evidence package(s) were served to both the tenant and the Residential Tenancy Branch. The landlord stated that the first package was served to the tenant in person on December 16, 2020; the second package was served to the tenant in person on January 9, 2021; and the third package was served to the tenant in person on March 21, 2021. . I accept the undisputed affirmed direct testimony of the landlord and find that the tenant was properly served as per sections 88 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 a monetary order for unpaid rent and 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 November 1, 2019 on a month-to-month basis as per the submitted copy of the signed "Manufactured Home Site Tenancy Agreement" dated October 21, 2019. The landlord provided direct testimony that this is a Residential Tenancy Act matter as he owns both the land and trailer which is being rented to the tenant. The landlord clarified that the amount \$1,350.00 in the agreement listed as "Total Rent and Fees" was in error and clarified that it was monthly rent of \$900.00 as listed above that as stated in section 4, "Rent and Fees". The landlord stated that the tenant paid a security deposit of \$450.00 which is identified as a \$450.00 "Rent Deposit".

Extensive discussion took place with the landlord to clarify the application filed. The landlord seeks an order of possession for unpaid rent and a monetary claim of \$3,690.00.

The landlord confirmed in his direct testimony that a 10 Day Notice for Unpaid Rent (the 10 Day Notice) dated October 25, 2020 under the Residential Tenancy Act which states in part that the 10 Day Notice was served in person and on the door or in the mailbox on October 25, 2020. The 10 Day Notice states that the tenant failed to pay rent of \$3,640.00 that was due on September 1, 2020 and provides for an effective end of tenancy date of November 5, 2020. Despite repeated attempts to clarify the discrepancy in the amounts between the application and the 10 Day Notice the landlord was unable to provide any details. The landlord stated that it was "probably a math error".

The landlord referred to a submitted copy of a spreadsheet which states that the tenant paid a total of \$10,060.00 and owed a total of \$13,950.00 leaving an owed balance of \$3,890.00. The landlord was again unable to provide any clarification on the discrepancy between the amounts listed. The landlord provided an updated notation that the tenant owed rent for February and March 2021 and that a payment of \$1,000.00 was made on January 7, 2021. The landlord also referred to the "Direct Request Worksheet", marked as "02" which shows:

Nov 1, 2019	\$1350.00	\$1050.00	Nov 1, 2019	\$300.00
Jan 1, 2020	\$900.00	\$0	-	\$900.00
Feb 1, 2020	\$900.00	\$0	-	\$900.00
Mar 2, 2020	\$900.000	\$460.00	Mar 2, 2020	\$440.00

The landlord also referred to another "Direct Request Worksheet", marked as "02" which shows:

Apr 1, 2020	\$900.00	\$0	-	\$900.00
May 1, 2020	\$900.00	\$0	-	\$900.00
Aug 7, 2020	\$900.00	\$600.00	Aug 7, 2020	\$300.00
Nov 1, 2020	\$900.00	\$800.00	Nov 12, 2020	\$100.00

The landlord also referred to the "Direct Request Worksheet", marked as "03" which shows:

Dec 1, 2020	\$900.00	\$0	-	\$900.00
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The landlord also provided direct testimony stating that a \$1,000.00 payment was made by the tenant for rent on January 8, 2021.

Analysis

Pursuant to section 39 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 accept the undisputed affirmed evidence of the landlord that the tenant was served with the 10 Day Notice dated October 25, 2020 in person on October 25, 2020. I also accept the undisputed affirmed evidence of the landlord that the tenant failed to pay rent of \$3,640.00 that was due by September 1, 2020. However, the landlord was unable to provide specific details on the amount owed based upon the 10 Day Notice dated October 25, 2020, nor was the landlord able to clarify and provide sufficient details of the monetary claim filed of \$3,690.00 or that of the owed balance of \$3,890.00 that was provided during the hearing in his direct testimony. I also note that the landlord had stated that a \$1,000.00 payment was received for rent on January 8, 2021 from the tenant.

Residential Tenancy Branch Policy Guideline #11, Amendment and Withdrawal of Notice to End Tenancy states in part,

This policy guideline addresses amendment, withdrawal and waiver of a notice to end tenancy.

A. LEGISLATIVE FRAMEWORK

The requirements for ending a tenancy are set out in sections 45 to 50 of the *Residential Tenancy Act* (RTA) and sections 37 to 43 of the *Manufactured Home Park Tenancy Act* (MHPTA).

A notice to end tenancy must comply with the form and content requirements under section 52 of the RTA and section 47 of the MHPTA and provide the right amount of notice based on the section of the legislation under which the tenancy is being ended.

Section 68 of the RTA and section 61 of the MHPTA provide that if a notice to end a tenancy does not comply with section 52, an arbitrator may amend the notice if satisfied that

- the person receiving the notice knew, or should have known, the information that was omitted from the notice, and
- in the circumstances, it is reasonable to amend the notice.

B. AMENDING A NOTICE TO END TENANCY

In determining if a person should have known particular information that was omitted from a notice to end tenancy, an arbitrator may consider whether a reasonable person would have known this information in the same circumstances. In determining whether it is reasonable in the circumstances to amend the notice, an arbitrator may look at all of the facts and consider, in particular, if one party would be unfairly prejudiced by amending the notice.

C. WITHDRAWAL OF NOTICE TO END TENANCY

A landlord or tenant cannot unilaterally withdraw a notice to end tenancy.

A notice to end tenancy may be withdrawn prior to its effective date only with the consent of the landlord or tenant to whom it is given.

A notice to end tenancy can be waived only with the express or implied consent of the landlord or tenant (see section D below).

It is recommended that withdrawal of a notice to end tenancy be documented in writing and signed by both the landlord and the tenant.

D. WAIVER OF NOTICE AND NEW OR CONTINUED TENANCY

Express waiver happens when a landlord and tenant explicitly agree to waive a right or claim. With express waiver, the intent of the parties is clear and unequivocal. For example, the landlord and tenant agree in writing that the notice is waived and the tenancy will be continued.

Implied waiver happens when a landlord and tenant agree to continue a tenancy, but without a clear and unequivocal expression of intent. Instead, the waiver is implied through the actions or behaviour of the landlord or tenant.

For example, if a landlord gives a notice to end tenancy, a landlord may accept rent from the tenant for the period up to the effective date of the notice to end tenancy without waiving the notice. However, if the landlord continues accepting rent for the period after the effective date but fails to issue rent receipts indicating the rent is for “use and occupancy only,” it could be implied that the landlord and tenant intend for the tenancy to continue.

Intent may also be established by evidence as to:

- whether the landlord specifically informed the tenant that the money would be for use and occupancy only;
- whether the landlord has withdrawn their application for dispute resolution to enforce the notice to end tenancy or has cancelled the dispute resolution hearing; and
- the conduct of the parties.

In this case, the landlord provided undisputed evidence that no notice of any sort was provided to the tenant after receiving the \$1,000.00 rent payment on January 8, 2021. This payment was received approximately 60 days after the effective end of tenancy date of November 5, 2020. As such, I find that the landlord by accepting this payment and not providing any notice of accepting the payment “for use and occupancy only” as an acceptance by withdrawal of the 10 Day Notice. The 10 Day Notice is cancelled and set aside. The tenancy shall continue.

As for the landlord’s monetary claim, I find that despite multiple attempts to have the landlord clarify the discrepancy between the filed amount of \$3,690.00; the amount listed on the 10 Day Notice of \$3,640.00 and the amount provided through the landlord’s monetary spreadsheet of \$3,890.00. I find that the only details provided by the landlord as a “math error” as insufficient to satisfy me on the contents of the notice. As such, without these details, the landlord’s application is dismissed with leave to reapply. Leave to reapply is not an extension of any applicable limitation period.

Conclusion

The landlord's application is dismissed.

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: April 06, 2021

Residential Tenancy Branch