



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR-PP, MNR-DR, FFL

Introduction

This hearing was convened by way of conference call concerning an application made by the landlords seeking an Order of Possession and a monetary order for unpaid rent or utilities and to recover the filing fee from the tenant for the cost of the application. The application was made by way of the Direct Request process which was referred to this participatory hearing, and an Interim Decision was provided to the landlords.

Both landlords attended the hearing with Legal Counsel, who gave submissions. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any submissions, and no one for the tenant joined the call.

The Interim Decision is dated June 21, 2021 and orders the landlords to serve the tenant with a Notice of Reconvened Hearing, the Interim Decision, and all other required documents within 3 days of receiving the Interim Decision. The landlords have provided a copy of an envelope addressed to the tenant with a Registered Mail stamp containing a tracking number and a Canada Post date stamp of June 23, 2021. Counsel for the landlord submits that the documents required were in that envelope, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act* and order of the director.

Some of the landlords' evidence was submitted today, and I decline to consider it, however all other evidence provided by the landlords for the Direct Request application and for this hearing has been reviewed and is considered in this Decision. The tenant has not provided any evidence.

Issue(s) to be Decided

- Have the landlords established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 29, 2021 was issued in accordance with the *Residential Tenancy Act*?
- Have the landlords established a monetary claim as against the tenant for unpaid rent?

Background and Evidence

Counsel for the landlords submits that the Statutory Declaration of the landlord and its attachments form part of the evidence for this hearing.

The fixed-term tenancy began on June 1, 2015 and expired on May 31, 2016. A copy of the tenancy agreement has been provided for this hearing which names 2 tenants. However the parties entered into another tenancy agreement, on March 4, 2016, a copy of which has also been provided, which removes one of the tenants, for a tenancy commencing March 1, 2016 and expiring on May 31, 2016, thereafter reverting to a month-to-month tenancy. The tenant still resides in the rental unit.

Rent in the amount of \$1,850.00 was payable on the 1st day of each month which was increased and is presently \$1,925.00 effective January 1, 2018. A copy of the Notice of Rent Increase has been provided as evidence. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$925.00 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is a single family home, and the landlords do not reside on the property.

On July 21, 2020 the landlords made an Application for Dispute Resolution claiming a monetary order for unpaid rent and a hearing was held on September 28, 2020. Copies of the resulting Decision and order dated October 1, 2020 have been provided for this hearing. The landlords were granted a monetary order in the amount of \$11,650.00 which included recovery of the \$100.00 filing fee.

On March 30, 2021 the landlords served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice), and a copy has been provided with the landlords' application. The Notice is dated March 29, 2021 and contains an effective date of vacancy of April 13, 2021 for unpaid rent in the amount of \$23,100.00 that was

due on March 1, 2021. A Proof of Service document has also been provided which is signed by the landlord who served the Notice and a witness on March 30, 2021.

The Direct Request application was made on May 19, 2021 and sought monetary compensation in the amount of \$26,950.00. The Interim Decision of June 21, 2021 states that this participatory hearing is necessary because the application claimed unpaid rent of \$26,950.00, however the Direct Request Worksheet stated that rent was due from April, 2020 to September, 2020 which was previously awarded in the October 1, 2020 Decision and Order. It also states that the Arbitrator who considered the Direct Request application could not accurately determine the amount of rent due.

Legal Counsel also submits that the tenant has not paid any rent since August 27, 2020 which covered arrears to March, 2020, and is currently in arrears the sum of \$36,580.00 which includes the \$11,650.00 previously ordered for unpaid rent from April to September, 2020 and the filing fee ordered. The tenant is now further in arrears since the order was made in the sum of \$25,025.00 effective October 1, 2021.

The landlords have not been served with an Application for Dispute Resolution by the tenant disputing the Notice, and the tenant has not paid any rent since August 27, 2020. The landlords seek an Order of Possession and another monetary order in the amount of \$25,125.00 which includes the filing fee for the cost of this application and rent from October, 2020 to October, 2021. The tenant has changed the locks to the rental unit and will not grant access to the landlords.

Analysis

Firstly, when a tenant is served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant has 5 days to pay the rent in full or dispute the Notice by filing and serving the landlord with an Application for Dispute Resolution. If the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy and must move out by the effective date contained in the Notice.

In this case, I accept the Proof of Service document signed by the landlord and a witness showing that the tenant was served with the Notice on March 30, 2021 by placing it in the mailbox, which is deemed to have been served 3 days later, or April 2, 2021. Counsel for the landlords submitted that the tenant has not paid the rent and has not served the landlords with an application disputing the Notice, and I have no such application before me. Therefore, I find that the tenant is conclusively presumed to have accepted the end of the tenancy.

I have reviewed the Notice, and I find that it is in the approved form and contains information required by the *Residential Tenancy Act*. Therefore, I find that the landlords are entitled to an Order of Possession. Since the effective date of vacancy has passed, I grant the Order of Possession effective on 2 days notice to the tenant.

I have also reviewed the evidentiary material provided by the landlords with the Direct Request application. In the circumstances, I find that the landlords are entitled to an **additional** monetary order in the amount of \$25,025.00.

Since the landlords have been successful with this application, the landlords are also entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlords effective on 2 days notice to the tenant.

I further grant a monetary order in favour of the landlords as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of **\$25,125.00**.

This order is final and binding and may be enforced.

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: October 04, 2021

Residential Tenancy Branch