



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL

Introduction

The landlord filed an Application for Dispute Resolution by Direct Request (the “Application”) on December 31, 2021, seeking an order of possession for the rental unit and a monetary order to recover the money for unpaid rent and to recover the filing fee

This participatory hearing was convened after the issuance of a December 31, 2021, Interim Decision of an Adjudicator. The Adjudicator determined that the landlord’s application could not be considered by way of the Residential Tenancy Branch’s (the “**RTB**”) direct request proceedings, as had been originally request by the landlord. The Adjudicator reconvened the landlord’s application to a participatory hearing as the Adjudicator was unable to determine if the tenants were served the 10-Day Notice “in a manner that is considered necessary as per sections 71(2) and 88 of the *Act*”.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “**Act**”) on February 3, 2022. In the conference call hearing, I explained the process and provided the attending party the opportunity to ask questions.

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 \$1575.00 pursuant to section 55 and 67;
- recovery of the cost of the \$100.00 filing fee.

The landlord testified she served the tenants with the Notice of Dispute Resolution form and evidence package on January 3, 2022, by email. Tenants GG would not answer phone calls from the landlord or respond to text message or email. Tenants HK did speak with the landlord. She asked for the tenants’ current address to send them a registered letter with the documents, but they would not provide the new address because “it would make them look bad”. HK agreed to pick the paperwork up from the landlord’s mailbox. The landlord placed the documents in an envelope in the mailbox along with two letters addressed to the tenants and when she looked later in the afternoon, the envelopes were gone. The landlord uploaded a screenshot of the email sent and a picture of the package addressed to both tenants that she left in her mailbox.

Policy Guideline #12 “Service Provisions” subsection 11. “Deemed Receipt” provides, in part, as follows:

The Legislation sets out when documents that are not personally served

are considered to have been received. Unless there is evidence to the contrary, a document is considered or 'deemed' received:

- if given or served by mail (ordinary or Registered mail/Express Post with signature option), on the fifth day after mailing it;
- if given or served by fax, on the third day after faxing it;
- if given or served by email, on the third day after emailing it;
- if given or served by attaching a copy of the document to a door or other conspicuous place, on the third day after attaching it; and
- if given or served by leaving a copy of the document in a mailbox or mail slot, on the third day after leaving it.

Deemed receipt applies to all types of documents not personally served.

Deemed receipt provisions are generally used in the absence of evidence of the date documents were actually received, such as when a respondent has not filed a dispute or appeared at a dispute resolution hearing.

Based on the affirmed testimony of the landlord, I find that the tenants are deemed served on January 6, 2022, with proper notice of this participatory hearing and did not attend the hearing.

Issues to be Decided

Is the landlord entitled to:

- 1) an order of possession;
- 2) a monetary order for \$1575.00;
- 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 month to month tenancy agreement starting September 1, 2021. Monthly rent is \$1050.00 and is payable on the first day of each month. The tenants paid the landlords a security deposit of \$500.00. The landlord still retains the security deposit in trust.

The landlord applied for an Order of Possession pursuant to the 10-Day Notice issued to the tenants on November 02, 2021, for unpaid rent in the amount, \$1575.00, due on November 1, 2021. This amount accrued from unpaid rent for October (partial) and November (full). The 10-Day Notice was served by posting the notice on the tenants' door. The landlord photographed the 10 Day Notice posted on the tenants' door confirming the date served.

The landlord stated that the tenants abandoned the rental unit sometime in December 2021 without providing notice and as mentioned previously without providing a forwarding address

The tenants did not attend the hearing and provided no documentary evidence in this matter.

Analysis

I have reviewed the copy of the tenancy agreement in concert with the landlord's oral testimony on its' terms and conditions. I am satisfied that the agreement existed and both parties knew the terms and conditions therein. Based on the undisputed testimony of the landlord, and the proof of an agreement between the parties, I find the rent agreement was in place and clearly stated the amount and schedule for payment: rent is payable on the 1st day of each month.

Section 46 of the *Act* states a landlord may end a tenancy if rent is unpaid on any day after the day it is due by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenants receives the notice.

Following this, s. 46(4) says that within five (5) days after receiving a notice under this section, the tenants may either pay the overdue rent, in which case, the notice is of no force or effect, or dispute the notice by making an application for dispute resolution.

Next, s. 46(5) states that if a tenants received a notice under this section and does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenants are conclusively presumed to have accepted the tenancy ends on the effective date of the notice and must vacate the rental unit identified in the notice by that date.

Based on the undisputed submissions by the landlord, I find the landlord served the 10-Day Notice to the tenants by posting the 10-Day Notice on the tentants' door on November 2, 2021. The tenants are deemed served November 5, 2021, three (3) days after the 10-Day Notice was posted.

Although the 10-Day Notice states that the effective date of the Notice is November 10, 2021, given the date the 10 Day Notice was deemed served as set out above and the date upon which rent is due under the tenancy agreement, I find that this date does not comply with the minimum notice period required under s. 46(1) of the *Act*. As a result, I find that the effective date of the 10-Day Notice is automatically corrected to November 15, 2021, pursuant to s. 53 of the *Act*.

The tenants failed to pay the rent owing by November 10, 2021, within the five (5) days granted under s. 46(4) of the *Act*. There is no evidence before me that the tenants disputed the 10-Day Notice within the five (5) day period.

Based on the foregoing, I find that the tenants are conclusively presumed under s. 46(5) of the *Act* to have accepted that the tenancy ended on November 15, 2021, the effective date of the 10-Day Notice. The landlord stated the tenants abandoned the unit sometime in December. For this reason, I do not grant the landlord an Order of Possession. I accept the tenants will not return to the rental unit.

The evidence of the landlord on the monetary claim is not disputed. I grant the landlord the full amount claimed - \$1575.00- for rent owed for October and November 2021.

The *Act* s. 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlord. The landlord has established a claim of \$1575.00. After setting off the security deposit, there is a balance of \$1075.00. I am authorizing the landlord to keep the

\$500.00 security deposit in partial satisfaction of rent owed and award the balance of \$1075.00 as compensation for the October and November rent amounts.

As the landlord was successful in her application, she is entitled to recover the filing fee cost of \$100.00, pursuant to s. 72 of the *Act*.

$$\begin{array}{r} \text{\textbf{\$1575.00 (rent) + \$100.00 (filing fee) - \$500.00 (security deposit)}} \\ \text{\textbf{\$1175.00}} \end{array}$$

I find the tenants are obligated to pay the landlord \$1175.00.

Conclusion

Pursuant to section 55 and 72 of the *Act*, I grant the landlord a **Monetary Order** in the amount of **\$1175.00**. The tenants must be served with this Order as soon as possible. Should the tenants fail to comply with this Order, this Order may be filed in the **Small Claims Division of the Provincial Court and enforced as an Order of that Court**.

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 4, 2022

Residential Tenancy Branch