



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, FFL, MNR-DR

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 \$3,500 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

This matter came to a hearing on March 29, 2022. I issued an interim decision on that same date (the "**Interim Decision**") in which I granted a monetary order for \$2,800, amended the landlord's application to \$3,500, and gave the tenant leave to submit additional evidence which I would consider and then decision if it was necessary to reconvene the hearing. This decision should be read in conjunction with the Interim Decision.

In the Interim Decision I wrote:

During the hearing, it became clear that the central fact at issue was whether the tenant had paid November 2021 rent. PS testified that he had not, which is why the landlord issued a 10 Day Notice to End Tenancy on November 2, 2021. The tenant testified that he gave PS a cheque on November 2, 2021 for November's rent and that she issued him a receipt. PS denied this.

Based on this testimony, it would seem that the question of payment of November's rent should be a simple matter to determine. If the tenant paid it by cheque, his bank should be able to provide him with a copy of that cashed cheque, his chequing account statement should show the withdrawal of \$700, and the receipt would demonstrate that the tenant gave the cheque to the landlord. I asked the tenant why the tenant did not submit any of these documents as evidence. RL responded that the tenant was elderly and was being assisted in this matter by someone up for much of the time leading up to the hearing. She testified that she only started helping the tenant at "the 19th hour", and thought that the previous person helping the tenant had uploaded these documents.

[...]

On considering the submissions of the parties, I find it appropriate to adjourn this hearing to allow the tenant to provide the Residential Tenancy Branch and the landlord with copies of the following documents:

- 1) receipt from PS for November 2021 rent;
- 2) cheque for November 2021 rent (likely available from the tenant's bank);
and
- 3) banks statement for November 2021 showing that the cheque was chased (the tenant may redact other, unrelated transactions as well as his account number).

If one or more of these documents are not available, the tenant may upload a brief statement no longer than one page double-spaced explaining why it is unavailable. All documents submitted must be clear and legible. The tenant may not upload any other documents.

The tenant must provide and serve these documents no later than 4:00pm on Monday April 4, 2022. Once these documents are received, I will issue a further written decision in which I will either make a final decision on the landlord's application or order that the matter be reconvened for a further hearing.

I caution the tenant that, if he does not upload any documentary evidence by this deadline, I will issue a final decision in favour of the landlord. I have already stated above that I find PS's testimony to be more credible than that of the tenant. In the absence documents to the contrary, I will find that PS's testimony that the tenant did not pay November 2021 rent sufficient to discharge the landlord's evidentiary burden to prove its allegations.

Additionally, as discussed at the hearing, I attached a monetary order of \$2,800 to this interim decision, given that there is no dispute that the tenant has failed to pay December 2021 to March 2022 rent. I make no order about November 2021 rent at this time.

[emphasis added]

The tenant has not provided the Residential Tenancy Branch any of the required documents or a written statement explaining why he was unable to do so. As such, I assign little weight to his testimony that he paid November 2021 rent. For the reasons set out in the Interim Decision, I find PS's testimony to be more credible than the tenant's testimony. I find it is more likely than not that his claim that he had a receipt to corroborate his testimony to be a misguided attempt to enhance his credibility.

Accordingly, based on the testimony of the parties and the documentary evidence submitted, I find:

- The parties entered into a written tenancy agreement starting in November 2018 for the tenant to rent a manufactured home from the landlord. The monthly rent is

\$700. The landlord testified the tenant did not pay a security deposit (which the tenancy agreement reflects). The tenant testified he provided a deposit of \$350. I prefer the evidence of the landlord and find that no security deposit was paid.

- The tenant did not pay any rent for the months of November or December 2021 and January, February, or March 2022.
- On November 2, 2021, the landlord personally served the tenant with a 10 Day Notice to End Tenancy for Non-Payment of Rent (the “**Notice**”). It specified an effective date of November 11, 2021 and that the tenant was \$700 in arrears as of November 1, 2021.
- The tenant did not dispute the Notice.
- As of the date of the hearing the tenant was \$3,500 in arrears.

Section 26 of the Act states:

Rules about payment and non-payment of rent

26(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I find that the tenant has breached this section of the Act by failing to pay rent for the aforementioned months. I have already issued a monetary order for \$2,800, representing compensation for unpaid rent for December 2021 to March 2022 rent. As such, I issue a further monetary order for \$700 representing compensation for the unpaid November 2021 rent.

Section 46 of the Act permits a landlord to issue a notice to end tenancy if a tenant is in arrears. The landlord did this. I find that the Notice complies with the form and content requirements set out at section 52 of the Act. As such, I find the Notice is valid.

Accordingly, the landlord is entitled to an order of possession. In light of the tenant’s age and difficulty he may have in locating a new residence, I make the order of possession effective April 30, 2022 at 1:00 pm.

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

Conclusion

Pursuant to sections 67 and 72 of the Act, I order that the tenant pay the landlord \$800, representing the repayment of November 2021 rent and the \$100 filing fee.

Pursuant to section 55 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlord by April 30, 2022 at 1:00 pm.

I order the landlord to serve a copy of this decision and the attached orders on the tenant within three days of receiving them from the RTB.

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 6, 2022

Residential Tenancy Branch