



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OPR-D

Introduction

This matter proceeded by way of an ex parte Direct Request Proceeding, pursuant to section 55(4) of the Residential Tenancy Act (the "Act"), and dealt with the landlord's Application for Dispute Resolution (the Application) for:

- an Order of Possession based on unpaid rent pursuant to sections 46 and 55 of the Act

On February 23, 2023, the landlord's application was considered, and the Adjudicator determined this matter should be sent to a participatory hearing. The interim decision should be read in conjunction with this Decision as the Adjudicator made findings of service.

Both parties appeared, gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Background and Evidence

The tenancy began on December 1, 2021. Rent in the amount of \$2,300.00 was payable on the first of each month. A security deposit of \$1,150.00 was paid by the tenant.

The landlord indications in their application that they served the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") issued on December 12, 2022, by attaching to the door, A copy of the Notice was provided as evidence and a photograph showing it posted to the tenant's door.

The tenant testified that they did not get the Notice. The tenant stated that they have been trying to pay the outstanding rent.

The landlord argue the tenant did receive the Notice and they even provided the tenant with a text message showing it was posted to the door. Filed in evidence is a copy of the text message.

The landlord stated that the tenant was in rent arrears of \$3,300.00 at the time the Notice was issued. The landlord stated that the tenant paid in December 2022 the sum of \$700.00 and in January 2023 the sum of \$2,000.00 and in February 2023 the sum of \$2,900.00 and in March 2023 the sum of \$700.00. The total rent due was \$10,200.00 less payments of \$6,300.00 leaves a balance of unpaid rent in the amount of \$3,900.00.

The tenant acknowledge the amount of rent payments made to the landlord.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In this case, I do not accept the evidence of the tenant that they did not receive the Notice. It is clear by the supporting evidence the photograph and text message that the tenant was served on December 12, 2022, by posting to the door in accordance with the Act. I find the tenant was deemed served with the Notice on December 15, 2022.

The tenant did not pay the outstanding rent of \$3,300.00 as required by the Notice or dispute the Notice within 5 days after it was received. I find the tenant was conclusively presumed to have accepted that the tenancy ended on the effective date within the Notice, pursuant to section 46(5) of the Act.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Although at the hearing I indicated that the landlord would be entitled to a monetary order for the unpaid rent in the amount of \$3,900.00. However, I note the landlord was not seeking a monetary order when they filed their application. Therefore, I find it would be inappropriate to grant a monetary order as it was not requested in the application for dispute resolution.

Conclusion

The landlord is granted an order of possession.

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: March 21, 2023

Residential Tenancy Branch