



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OPR

Introduction

The Landlord applied for dispute resolution (“Application”) and seeks an Order of Possession on an undisputed 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) under section 55(2)(b) of the *Residential Tenancy Act* (the “Act”).

B.H., an Agent for the Applicant Landlord called into this teleconference at the date and time set for the hearing of this matter. B.H. affirmed to tell the truth during the hearing and was given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Although I waited until 1:11 P.M. to enable the Respondent Tenant to connect with this teleconference hearing scheduled for 1:00 P.M., the Tenant did not attend.

I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. During the hearing, I also confirmed from the online teleconference system that the Landlord and I were the only parties who had called into this teleconference.

B.H. testified they served the Notice of Dispute Resolution Package (“Materials”) on the Tenants by registered mail on March 20, 2023. The tracking number is provided on the first page of this Decision.

Considering the above evidence from B.H., I find that pursuant to section 89 of the Act, the Landlord’s Materials were sufficiently served to the Tenant.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

Issue to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

The attending party was given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

B.H. confirmed the tenancy started on January 24, 2019 with monthly rent of \$375.00 due on the first day of the month. They also testified that a security deposit of \$187.50 was taken, which they still retain, and that there was no pet damage deposit taken. The Tenant currently occupies the rental unit. A written tenancy agreement was signed which was entered into evidence by the Landlord.

B.H. testified that the rent due on September 1, 2022 went unpaid the Notice dated February 16, 2023 was served to the Tenant by being attached to the door of the rental unit on February 16, 2023. A copy of the Notice, which provides for an effective date of March 1, 2023, was entered into evidence by the Landlord.

B.H. confirmed that no rent payments have been received since issuing the Notice. They also confirmed that they are seeking only an Order of Possession and waive their rights to a Monetary Order for unpaid rent and to an order authorizing them to retain the security deposit. They confirmed that they wish for the Order of Possession to show their name rather than the Landlord's, as reflected in the Application.

Analysis

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some, or all, of the rent. Additionally, section 46(1) of the Act allows a landlord to end a tenancy if the tenant does not pay rent on time by issuing a 10 Day Notice to End Tenancy for Unpaid Rent.

I accept the Landlord's Agent's undisputed testimony that rent due September 1, 2022 was not paid by the Tenant. Therefore, I find on a balance of probabilities that the

Notice was given for a valid reason, namely, the non-payment of rent. I also find that the Notice complies with the form and content requirements of section 52 of the Act.

The Notice was served on February 16, 2023 by attaching to the door of the rental unit, therefore would have been deemed received on February 19, 2023, the third day after it is attached to the door in accordance with section 90 of the Act. The effective date on the Notice of March 1, 2023 is correct.

I accept the Landlord's Agent's undisputed testimony that the outstanding rent was not paid in full within five days of the Tenant receiving the Notice. Had this been done it would have meant the Notice has no effect in accordance with section 46(4)(a). Additionally, there is no record of the Tenant disputing the Notice. Therefore, under section 46(5) of the Act, the Tenant is presumed to have accepted the Notice.

Based on the above findings, the Landlord is granted an Order of Possession pursuant to section 55(2)(b) of the Act. A copy of the Order of Possession is attached to this Decision and must be served on the Tenant. The Tenant has two days to vacate the rental unit from the date of service or deemed service. I find that the Tenancy ended on March 1, 2023 in accordance with the Notice.

As the Landlord has waived their right to a Monetary Order for unpaid rent, I make no order under section 55(1.1) of the Act. The Landlord also waived their right to an order authorizing them to retain the security deposit, so I make no order under section 38(4)(b) of the Act.

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 Act.

Dated: April 17, 2023

Residential Tenancy Branch