



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Mountain Family Ventures Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

**OPRM-DR, FFL
CNR**

Introduction

This hearing dealt with applications filed by both the landlord and the tenant pursuant to the *Residential Tenancy Act* ("Act").

The landlord applied for:

- An order of possession and a monetary order for unpaid rent, by direct request pursuant to sections 46 and 55; and
- Authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- An order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities pursuant to section 46.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:10 a.m. to enable the tenants to call into this teleconference hearing scheduled for 11:00 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified she served the tenant with her Notice of Dispute Resolution Proceedings package by registered mail on January 31, 2020 and provided a tracking number recorded on the cover page of this decision. I deem the Notice served upon the tenant on February 5, 2020, five days after sending by registered mail pursuant to sections 89 and 90 of the *Act*.

Preliminary Issue

The landlord testified she filed an amendment to her application seeking compensation for losses unrelated to rent as well as unpaid arrears in rent since filing the Application for Dispute Resolution. She served the tenant with the amendment before filing it with the Residential Tenancy Branch. As the landlord's original application was filed for a direct request proceeding, an arbitrator can only write legally binding decisions for issues relating to unpaid rent. Pursuant to Rule 4.2, the landlord was allowed to amend her application at the hearing for additional arrears since filing the Application for Dispute Resolution.

Issue(s) to be Decided

Should the notice to end tenancy be upheld or cancelled?

Is the landlord entitled to a monetary order for unpaid rent?

Can the landlord recover the filing fee?

Background and Evidence

The landlord provided the following undisputed testimony. The tenancy began on November 15, 2019 with rent set at \$2,200.00 per month payable on the 15th day of the month. A copy of the tenancy agreement was provided as evidence by the landlord. A security deposit of \$1,100.00 was collected which the landlord continues to hold. A condition inspection report was conducted at the commencement of the tenancy.

In December 2019, the tenant began to pay rent late. The landlord provided a worksheet showing when rent was due and when it was paid. \$2,200.00 rent for the month of January, 2020 became due on January 15th and the landlord did not receive it. The landlord testified she has not received any rent since December 2019.

On January 19, 2020 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the tenant's door. A witnessed, signed proof of service document was filed by the landlord. The notice indicates that the tenant failed to pay \$2,200.00 rent that was due on January 15, 2020. The Notice also indicates the tenant failed to pay utilities of \$100.00 due pursuant to a written demand on January 15, 2020. The landlord testified that the tenant pays utilities by forwarding \$100.00 to the landlord each month and the amounts payable are reconciled at a specified period. This arrangement was not recorded in the tenancy agreement or addendum. The effective date noted on the Notice was January 28, 2020.

The landlord testified she has not received rent for the months of January, February or March 2020. She seeks arrears of \$6,600.00 representing three months unpaid rent.

Analysis

The tenant did not attend the hearing which was scheduled by conference call at 11:00 a.m. Rule 7.3 of the Rules of Procedure provides that:

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application with or without leave to re-apply.

Consequently I dismiss the tenant's application without leave to reapply.

Section 55 of the *Act* provides that:

If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- a. the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and
- b. the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As I have dismissed the tenant's application, and I find that the landlord's 10 Day Notice complies with the form and content requirements of section 52 as it is signed and dated by the landlord, provide the address of the rental unit, the effective date of the notice, and the grounds for the tenancy to end, I find that the landlord is entitled to an Order of Possession pursuant to section 55. As the effective date of the notice has passed, I issue an Order of Possession effective two (2) days after service.

I find that the tenant was obligated to pay the \$2,200.00 monthly rent. I accept the landlord's undisputed evidence that the total amount of arrears for this tenancy is \$6,600.00 and that the tenant has not made any payments towards the arrears. I issue a monetary award in the landlord's favour for unpaid rent of \$6,600.00, pursuant to section 67 of the *Act*.

The landlord has not provided any evidence to sufficiently satisfy me that the tenant was served with any written demand to pay utilities on January 15, 2020, as stated in the Notice to End Tenancy. Likewise, the landlord has not provided corroborative proof the

tenant is obligated to pay \$100.00 per month in utilities. The landlord is not entitled to monetary compensation for unpaid utilities pursuant to this Notice.

As the landlord's application was successful, the landlord is entitled to recovery of the \$100.00 filing fee for the cost of this application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security deposit of \$1,100.00 in partial satisfaction of the monetary award issued in the landlord's favour.

Item	Amount
Rent for January, February and March	\$6,600.00
Filing fee	\$100.00
Less security deposit	(\$1,100.00)
Total	\$5,600.00

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**.

I issue a monetary order in the landlord's favour in the amount of **\$5,600.00**.

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 27, 2020

Residential Tenancy Branch