



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, FFL

Introduction

This hearing was scheduled to deal with a tenant's application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and a landlord's application for an Order of Possession and Monetary Order for unpaid rent and loss of rent.

The landlord appeared at the hearing; however, there was no appearance on part of the tenant. I waited over 20 minutes to give the tenant the opportunity to appear and she did not. As such, I dismiss her Application for Dispute Resolution without leave to reapply.

I confirmed that the landlords served their Application for Dispute Resolution to the tenant via registered mail sent on February 6, 2020 and delivered to the tenant on February 10, 2020 (registered mail tracking number provided on the cover page of this decision). Accordingly, I was satisfied the tenant was duly notified of the landlord's claims against her and I proceeded to hear the landlord's Application for Dispute Resolution.

The style of cause was amended to remove the name of the tenant's minor child as a tenant.

Issue(s) to be Decided

1. Are the landlords entitled to an Order of Possession for unpaid rent?
2. Are the landlords entitled to compensation for unpaid and/or loss of rent, as claimed?

Background and Evidence

The parties executed a written tenancy agreement on December 26, 2019 for a month to month tenancy set to commence on January 1, 2020. The tenant was required to pay a security deposit of \$750.00 on January 1, 2020 and monthly rent of \$1500.00 on the first day of every month.

The landlord received the following amounts from the tenant:

December 31, 2019	\$ 580.00
January 5, 2020	430.00
January 6, 2020	120.00
January 7, 2020	<u>650.00</u>
Total	\$1,780.00

The landlord applied the first \$750.00 received toward the security deposit and the rest was applied toward rent for January 2020 leaving an outstanding balance owed for rent of: \$470.00.

The landlords and a witness personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") on January 15, 2020 with a stated effective date of January 26, 2020. The tenant filed to dispute the 10 Day Notice on January 23, 2020 indicating she was personally served with the 10 Day Notice on January 16, 2020. As described previously, the tenant did not appear at the hearing scheduled to deal with her request for cancellation of the 10 Day Notice and her application was dismissed.

The 10 Day Notice is in the approved form and is duly completed by the landlords.

The landlord testified that the tenant has not made any payments since the payment of \$650.00 received on January 7, 2020, as described above, and the tenant continues to occupy the rental unit.

The landlords seek an Order of Possession effective as soon as possible and a Monetary Order for the balance of rent owed for January 2020 and loss of rent for February 2020 and March 2020.

Documentary evidence provided by the landlords included a copy of the tenancy agreement and the 10 Day Notice.

Analysis

Section 55(1) of the Act provides as follows:

55 (1) 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.

In this case, I have dismissed the tenant's application to cancel the 10 Day Notice. Upon review of the 10 Day Notice, I am satisfied that it meets the form and content requirements of section 52 of the Act. Accordingly, I find the criteria of section 55(1) have been met and the landlords are provided an Order of Possession. Considering the landlords have already suffered months of loss of rent and the tenant continues to occupy the rental unit, I provide the landlords with an Order of Possession effective two (2) days after service upon the tenant.

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right to withhold rent. I was provided no evidence to suggest the tenant had a legal right to withhold rent.

I accept the unopposed evidence before me that the tenant was required to pay a \$750.00 security deposit and \$1500.00 per month for rent. The landlord received a total of \$1780.00 toward the security deposit and rent for January 2020. The landlord has applied \$750.00 toward the security deposit and \$1030.00 toward rent, leaving an outstanding balance of rent in the amount of \$470.00. I find the landlords entitled to recover the unpaid rent of \$470.00 and I award that amount to the landlords.

Considering the tenancy came to an end on January 26, 2020 and the tenant did not vacate the rental unit or provide the landlord any monies for continued use and occupancy of the unit, I find the tenant's actions, or lack thereof, to be a violation of the Act and caused the landlords to suffer further loss of rent for February 2020 and March 2020. Therefore, I award the landlords loss of rent for these months in the sum of \$3,000.00.

I further award the landlords recovery of the \$100.00 filing fee.

The landlords did not request authorization to retain the security deposit and it remains in trust to be administered in accordance with the Act.

In keeping with all of the above, I provide the landlords with a Monetary Order calculated as follows:

Outstanding rent for January 2020	\$ 470.00
Loss of rent for February 2020 and March 2020	3000.00
Filing fee	<u>100.00</u>
Monetary Order	\$3,570.00

Conclusion

The landlords are provided an Order of Possession effective two (2) days after service upon the tenant. The landlords are provided a Monetary Order in the sum of \$3570.00 for unpaid and loss of rent up to and including the month of March 2020.

The security deposit of \$750.00 remains in trust to be administered in accordance with the Act.

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