



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OLC, CNR-MT, CNC-MT, RR**

Introduction

This hearing was scheduled pursuant to two Applications for Dispute Resolution filed by the tenant. The tenant filed an Application for Dispute Resolution to dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice"), an extension of time to file to dispute the 10 Day Notice; and, orders for the landlord to comply with the Act, regulations or tenancy agreement. In a second Application for Dispute Resolution the tenant filed to dispute a One Month Notice to End Tenancy for Cause ("1 Month Notice") and authorization to reduce rent payable.

The tenant did not appear at the hearing despite leaving the teleconference call open for approximately 45 minutes.

The landlord appeared and was affirmed. The landlord was ordered to not record the proceeding.

The landlord stated he was not served with the tenant's proceeding packages; however, he was provided a copy of the tenant's Application for Dispute Resolution and Notice of Dispute Resolution Proceeding by a staff person with the Residential Tenancy Branch. Despite not being served by the tenant the landlord wished to proceed to deal with the tenant's requests for cancellation of the Notices to End Tenancy. Accordingly, I deemed the landlord sufficiently served pursuant to the authority afforded me under section 71 of the Act.

Since the tenant did not appear at the hearing to provide evidence he is entitled to a rent reduction or orders for compliance, I dismissed those remedies without leave to reapply and I proceeded to consider whether the Notices to End Tenancy should be upheld or cancelled since the landlord bears the burden to demonstrate the landlord issued a valid and enforceable Notice to End Tenancy.

The landlord testified the landlord served the tenant with his evidence package on May 20, 2021 by leaving the documents under the door mat in front of the rental unit, which is not a permissible form of service.

I noted that the tenant had not uploaded a copy of the subject Notices to End Tenancy for my review. The landlord stated he thought the tenant was required to do so. Under the Rules of Procedure, a tenant disputing a Notice to End Tenancy is required to provide a copy of the Notice to End tenancy under dispute. Although this was the failing of the tenant, where a landlord seeks an Order of Possession, the Arbitrator must be satisfied the Notice to End Tenancy meets the form and content requirements of the Act. The landlord stated he had the subject Notices to End Tenancy in front of him and he could provide them for my review. I ordered the landlord to read them into evidence during the hearing. I further ordered the landlord to provide a copy of the 10 Day Notice and registered mail receipt used to serve the 10 Day Notice immediately upon the teleconference call ending, which he did. Accordingly, I have reviewed the 10 Day Notice and registered mail receipt provided by the landlord in making this decision.

Issue(s) to be Decided

1. Should the 10 Day Notice and/or 1 Month Notice be upheld or cancelled?
2. Is the landlord entitled to an Order of Possession?
3. Is the landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

The landlord submitted that the tenant began occupying the 2 bedroom suite in August 2019. Starting February 1, 2021, the tenant rented the 2 bedroom suite and the adjoining studio suite at the property. The landlord confirmed that he does not share a kitchen or bathroom with the tenant and most of his possessions are located in a commercial warehouse space below the rental unit.

Starting February 1, 2021, the tenant was required to pay a total of \$2800.00 in rent for both rental units, on the first day of every month, with \$1600.00 being allocated to the 2 bedroom suite and \$1200.00 being allocated to the studio suite. The tenant paid the landlord \$2000.00 in security deposits; however, the landlord only required a security deposit totalling of \$1400.00 and the landlord applied the excess \$600.00 to the rent for March 2021.

The tenant did not pay any rent for March 2021 except for the \$600.00 overpayment described above and on March 13, 2021 the landlord sent a 10 Day Notice to End Tenancy or Unpaid Rent or Utilities to the tenant via registered mail. The 10 Day Notice indicates the tenant failed to pay \$2800.00 less \$600.00, or \$2200.00 as of March 1, 2021. The 10 Day Notice has a stated effective date of March 28, 2021.

The landlord testified that after serving the 10 Day Notice the tenant did not pay anything toward the outstanding rent and the tenant has not paid any monies for subsequent months and he continues to occupy the rental unit.

Also, on March 13, 2021 the landlord served the tenant with a One Month Notice to End Tenancy for Cause with a stated effective date of April 30, 2021. The landlord ticked the boxes on the second page of the 1 Month Notice but did not provide any Details of Cause in the space provided on the 1 Month Notice and I informed the landlord the 1 Month Notice was not sufficiently complete and I declined to consider it further.

Analysis

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 under the Act to withhold rent.

Where a tenant does not pay rent the landlord is at liberty to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the 10 Day Notice or the tenant has five days to dispute the 10 Day Notice by filing an Application for Dispute Resolution.

In this case, I accept that the unopposed evidence before me that the tenant was required to pay rent of \$2800.00 on the first day of every month starting on February 1, 2021 and he failed to pay any rent for March 2021 except for the \$600.00 credit the tenant had for overpaying the security deposit. I also accept that the tenant was served with a signed and dated 10 Day Notice sent by registered mail on March 13, 2021. A search of the Canada Post website shows the registered mail was delivered on March 16, 2021. As such, I find the tenant had until March 21, 2021 to either pay the outstanding rent to nullify the 10 Day Notice or file an Application for Dispute Resolution to dispute it.

The tenant filed to dispute the 10 Day Notice on March 30, 2021 but the tenant did not provide evidence to demonstrate an exceptional circumstance prevented him from filing within time. As such, I deny the tenant's request for an extension under section 66 of the Act and I consider the 10 Day Notice undisputed. Therefore, I dismiss the tenant's application that I cancel the 10 Day Notice.

Section 55 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.

(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [*landlord's notice: non-payment of rent*], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

I have dismissed the tenant's application that I cancel the 10 Day Notice and upon review of the 10 Day Notice provided to me, I am satisfied it meets the form and content requirements of section 52 of the Act. Therefore, I must provide the landlord with an Order of Possession and a Monetary Order for the unpaid rent under section 55(1) and (1.1) of the Act.

Provided to the landlord with this decision is an Order of Possession effective two (2) days after service. Also provided to the landlord is a Monetary Order for the unpaid rent of \$2200.00 that appears on the 10 Day Notice.

The security deposit remains in trust for the tenant and the landlord remains at liberty to file his own Application for Dispute Resolution to seek any loss of rent not included in the Monetary Order I have provided, or other damages or loss pertaining to this tenancy.

Conclusion

The tenant's application is dismissed without leave to reapply.

The tenancy is ended due to unpaid rent. The landlord is provided an Order of Possession effective two (2) days after service and a Monetary Order in the net amount of \$2200.00 to serve and enforce upon the tenant.

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: May 31, 2021

Residential Tenancy Branch