



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, LRE, OLC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the *Residential Tenancy Act* (the “Act”) to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”), issued on March 2, 2021, to cancel a One Month Notice to End Tenancy for Cause, and to suspend or restrict the landlord’s right to access the rental unit and to have the landlord comply with the Act.

This matter was set for hearing by telephone conference at the request of the tenant. The tenant was also sent a reminder email notification of the hearing scheduled for June 15, 2021, at 11:00 am to the email address the tenant provided in their application. The tenant did not appear, and the hearing proceeded in the absent of the tenant.

The landlord appeared. The landlord stated that the tenant vacated the premises on March 17, 2021. The landlord stated they do not need an order of possession; however, they seek to have a monetary order made for the unpaid rent, pursuant to section 51(1.1) and 55 (4)(b) of the Act.

As the tenant has vacated the premise, I find I do not need to consider the merits of the tenant’s application to cancel a One Month Notice to End Tenancy for Cause, to suspend or set conditions on the landlord’s right to access the rental unit or to order the landlord comply with the Act. Therefore, I dismiss the tenant’s application without leave to reapply.

However, as the 10 Day Notice is the subject of this hearing and was given for unpaid rent, I must still consider if the 10 Day Notice complies with section 52 of the Act, and if rent remains unpaid, pursuant to section 51(1.1) of the Act, as I must grant the landlord an order for the unpaid rent.

Issue to be Decided

Is the landlord entitled to a monetary order for unpaid rent pursuant to section 51(1.1) and 55(4)(b) of the Act?

Background and Evidence

The tenancy began on July 1, 2020. Rent in the amount of \$1,100.00 was payable on the first of each month. A security deposit of \$550.00 was paid by the tenant.

The landlord testified that the tenant was served with the 10 Day Notice for unpaid rent for March 2021. The landlord stated normally the tenant would pay half the rent directly and the other half would come from a 3rd party by cheque; however, they did not receive any money for March 2021 rent.

The tenant submits in their application the following on the 10 Day Notice and issue of unpaid rent,

“She is lying about receiving a cheque from [name removed] Housing”

[Reproduced as written.]

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find 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.

In this case, I have reviewed the 10 Day Notice filed in evidence. I find the 10 Day Notice complies with section 52 of the Act.

Although the tenant has vacated the premise and the tenancy has ended. I must determine under section 55(1.1) and 55(4)(b) of the Act if the landlord is entitled to a monetary order for the unpaid rent.

I accept the evidence of the landlord that the tenant failed to pay rent for March 2021 and was served with the 10 Day Notice. The tenant acknowledge they received the 10 Day Notice, when they filed their application.

While the tenant submits in their application that the landlord received a cheque from a housing society, the tenant failed to appear to give testimony on this issue. Further, the tenant could have gone to the housing society to obtain a copy of the cheque to prove it was received and cashed by the landlord. The tenant submitted no evidence with their application to prove all rent or even part of the rent was paid. I find the tenant breach section 26 of the Act, when they failed to pay the rent. Therefore, I dismiss the tenant's application without leave to reapply and uphold the 10 Day Notice.

Although the landlord is entitled to an order of possession under the Act, the landlord does not require an order of possession as the tenant has vacated.

As I have dismissed the tenant's application and have upheld the 10 Day Notice, I find I must grant the landlord an order for the unpaid rent. I find the landlord has established a total monetary claim of **\$1,100.00** for unpaid rent for March 2021. I order that the landlord retain the security deposit of **\$550.00** to offset the amount owed, I grant the landlord an order under section 55(4)(b) and 67 of the Act for the balance due of **\$550.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

As the tenant has failed to provide the landlord with a forwarding address, I find it is appropriate to grant the landlord a substituted service order by serving the tenant with a copy of the monetary order by email, as this was a service address the tenant had written in their application. I have noted the email address for service on the covering page of this decision.

Conclusion

The tenant's application is dismissed without leave to reapply. The landlord is granted a monetary order pursuant to section 55(4)(b) and 67 of the Act. I authorize the landlord to keep the security deposit to offset the amount owed. I grant the landlord a substituted service order that they can serve the tenant with a copy of the monetary order by email.

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: June 16, 2021

Residential Tenancy Branch