



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

The Tenant applies to cancel a 10-Day Notice to End Tenancy pursuant to s. 46 of the *Residential Tenancy Act* (the “*Act*”).

H.L. appeared on her own behalf as the Landlord. The Tenant did not appear, nor did someone appear on their behalf.

Pursuant to Rule 7.1 of the Rules of Procedure the hearing may be conducted in the absence of a party and may make a decision or dismiss the application. As the Landlord was present, the hearing proceeded in the absence of the Tenant.

The Landlord affirmed to tell the truth during the hearing. The parties were given a full opportunity to be heard, to present sworn testimony, question the other party and to make submissions. I advised the Landlord of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The Landlord confirmed that she was not recording the hearing.

The 10-Day Notice to End Tenancy was signed on May 12, 2021. The Landlord advised they posted the Notice to End Tenancy on the Tenant’s door on May 12, 2021. I find that the Notice to End Tenancy was served in accordance with s. 88 of the *Act*. I find that the Notice to End Tenancy was deemed served on May 15, 2021 pursuant to s. 90 of the *Act*.

The Landlord acknowledged receipt of the Notice of Dispute Resolution from the Tenant, which had been sent by registered mail. I find that the Notice of Dispute Resolution was served in accordance with s. 89 of the *Act*.

Preliminary Issue – Service of the Landlord's Evidence

The Landlord submitted evidence in response to the Tenant's application. At the outset of the hearing, the Landlord advised that the Tenant had abandoned the rental unit on September 4, 2021 and had not provided a forwarding address.

The Landlord submitted a registered mail receipt dated September 7, 2021 as proof that the evidence package had been served. H.L. indicated having received the Tenant's new address from the property manager for the strata in which the rental unit is located.

Given the circumstances, I am not satisfied that the Landlord served their evidence in accordance with the *Act*. The Landlord obtained the Tenant's address from third parties and has submitted no proof that the Tenant does, in fact, reside at the new address. Pursuant to Rule 3.17 of the Rules of Procedure, I refuse to consider the Landlord's documentary evidence submitted as part of this hearing except for the following:

- Notice to End Tenancy signed May 12, 2021, which was received by the Tenant as it formed the basis of the present application;
- The written Tenancy Agreement, which is dated, signed by the parties, and corresponds with the information provided to the Residential Tenancy Branch by the Tenant in the present application; and
- The Repayment Plan signed on August 18, 2020, as the Tenant acknowledges unpaid rent from the affected period by the COVID-19 state of emergency and an agreement on repayment of rent owing in his application.

Issue(s) to be Decided

- 1) Whether the 10-Day Notice to End Tenancy signed May 12, 2021 ought to be cancelled?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, excluding the evidence provided by the Landlord as set out above. Only the evidence relevant to the issue in dispute will be referenced in this decision.

The Tenancy Agreement indicated that the tenancy began on September 30, 2019. Rent was payable on the first of each month in the amount of \$1,695.00. The Landlord confirmed holding a security deposit of \$847.50 in trust for the Tenant.

The Notice to End Tenancy signed on May 12, 2021 indicated that as of May 1, 2021, the Tenant had arrears in rent in the amount of \$5,430.00.

The Landlord advised that a portion of the amount in the Notice to End Tenancy was in relation to rent affected by the COVID-19 state of emergency (the “affected rent”). The Landlord provided a repayment plan signed on August 18, 2020, which she indicated was emailed to the Tenant on the same day. The Repayment Plan sets out that the total affected rent was \$3,775.00. Payments were to be made in 10 equal payments of \$377.50, beginning on October 1, 2020 and ending on July 1, 2021.

The Landlord advised that the Tenant made the following payments with respect to the affected rent:

September 2021	\$330.00
October 2021	\$630.00
<u>November 2021</u>	<u>\$805.00</u>
Total:	\$1,765.00

The Landlord further advised that the Tenant failed to make his rent payments when due beginning in December 2020. The Landlord advised that prior to the Notice to End Tenancy being issued, the Tenant made the following rent payments:

December 2020	\$800.00
January 2021	\$500.00
February 2021	\$2,150.00
March 2021	\$1,700.00
<u>April 2021</u>	<u>\$800.00</u>
Total:	\$5,950.00

The Landlord indicated that after the Notice to End Tenancy was issued on May 12, 2021, the Tenant made a payment of \$800.00 in May 2021.

The Landlord advised that the Tenant failed to pay rent when due from June 1, 2021 to September 1, 2021. The Landlord further advised that the Tenant failed to make

payments pursuant to the Repayment plan except as provided above and made no payments on June 1, 2021 and July 1, 2021.

Analysis

The Tenant seeks to cancel a 10-Day Notice to End Tenancy pursuant to s. 46. As the Tenant has vacated the rental unit, the issue of cancelling the 10-Day Notice to End Tenancy is moot. I therefore dismiss the Tenant's application to cancel the Notice to End Tenancy signed May 12, 2021.

Pursuant to s. 55(1.1) of the *Act*, if a tenant's application to cancel a notice to end tenancy for unpaid rent is dismissed and the notice complies with the formal requirements of s. 52, then the Director must grant an order for unpaid rent.

Upon review of the Notice to End Tenancy signed on May 12, 2021, I find that it complies with the formal requirements of s. 52 of the *Act*. It is in the proper form, signed and dated by the Landlord, has the correct address, has the correct effective date, and properly sets out the grounds for ending the tenancy. I accept the Landlord's oral evidence that the Tenant made payments as specified above and owed rent on May 1, 2021, both monthly rent and rent pursuant to the Repayment plan. Given the formalities have been met, I must grant an order for unpaid rent.

Policy Guideline 3, at pages 3 and 4, provides the following guidance with respect to unpaid rent ordered under s. 55(1.1):

To determine whether an amount owing is for unpaid rent and must be ordered at the hearing, the director must make a finding about when the tenancy ends or ended.

If the tenant has vacated or abandoned the rental unit prior to the date of the dispute resolution hearing, the date the tenancy ended is the date that the tenant vacated or abandoned the rental unit. Only rent owing up until this date would constitute unpaid rent for the purpose of section 55(1.1) of the *RTA* (section 48(1.1) of the *MHPTA*).

...

If the director is satisfied upon reviewing submitted materials and hearing evidence as to an amount of unpaid rent owing, including rent owing since the

time the notice to end tenancy was issued, the director must grant an order to the landlord for the amount of unpaid rent found to be owing.

The Landlord advised that the Tenant moved out on September 4, 2021. I find that the tenancy ended on September 4, 2021 when the Tenant left the rental unit.

On the evidence before me, I find the Tenant owed the following monthly rent over the relevant time frame:

Month	Owed	Paid	Difference
December 2020	\$1,695.00	\$800.00	- \$895.00
January 2021	\$1,695.00	\$500.00	- \$1,195.00
February 2021	\$1,695.00	\$2,150	\$455.00
March 2021	\$1,695.00	\$1,700.00	\$5.00
April 2021	\$1,695.00	\$800.00	- \$895.00
May 2021	\$1,695.00	\$800.00	- \$895.00
June 2021	\$1,695.00	\$0.00	- \$1,695.00
July 2021	\$1,695.00	\$0.00	- \$1,695.00
August 2021	\$1,695.00	\$0.00	- \$1,695.00
September 2021	\$1,695.00	\$0.00	- \$1,695.00
TOTAL OWED			\$10,200.00

I find that the Repayment Plan provided by the Landlord was in the form provided by the Residential Tenancy Branch and met the formal requirements as set out under *COVID-19 (Residential Tenancy Act and Manufactured Home Park Tenancy Act) (No. 3) Regulation*, in particular s. 4. I find that the affected rent could form the basis to end the tenancy on its own and could properly be included in the amount owed in the Notice to End Tenancy signed on May 12, 2021. I further find that the affected rent owed in the amount of \$3,775.00 ought to have been paid no later than July 10, 2021 as there was no extension to the repayment agreed upon by the parties.

On the evidence provided to me, I find the Tenant owed the following affected rent to the Landlord in accordance with the Repayment Plan:

Month	Owed	Paid	Difference
October 2020	\$377.50	\$960.00 (\$330.00 + \$630.00)	\$582.50
November 2020	\$377.50	\$805.00	\$427.50

December 2020	\$377.50	\$0.00	- \$377.50
January 2021	\$377.50	\$0.00	- \$377.50
February 2021	\$377.50	\$0.00	- \$377.50
March 2021	\$377.50	\$0.00	- \$377.50
April 2021	\$377.50	\$0.00	- \$377.50
May 2021	\$377.50	\$0.00	- \$377.50
June 2021	\$377.50	\$0.00	- \$377.50
July 2021	\$377.50	\$0.00	- \$377.50
TOTAL OWED			\$2,010.00

I am satisfied on the evidence before me that total unpaid rent, including affected rent, is \$12,210.00. The Landlord shall have their order for unpaid rent.

In partial satisfaction of the amount owed by the Tenant, I order that the Landlord retain the security deposit of \$847.50 pursuant to s. 72(2) of the *Act*. Taking this into account, the Tenant must pay **\$11,362.50** to the Landlord.

Conclusion

I dismiss the Tenant's application to cancel the 10-Day Notice to End Tenancy signed on May 12, 2021 as the tenancy ended on September 4, 2021.

I find, pursuant to s. 55(1.1) of the *Act*, that total unpaid rent is \$12,210.00, which is the total amount owed by the Tenant. In partial satisfaction of this amount, I order that the Landlord shall retain the security deposit of \$847.50. In total, the Tenant shall pay **\$11,362.50** to the Landlord, representing the difference between total unpaid rent of \$12,210.00 and the security deposit of \$847.50 retained by the Landlord.

It is the Landlord's obligation to serve this order on the Tenant.

If the Tenant does not comply with this order, it may be filed by the Landlord with the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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: October 13, 2021

Residential Tenancy Branch