



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenants: CNL, CNR, CNC, FFT

Landlord: OPL, MNR-DR, OPR-DR

Introduction

This hearing dealt with three applications pursuant to the *Residential Tenancy Act* (the “Act”). The Tenants made one application for:

- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent dated July 3, 2021 (the “10 Day Notice”) pursuant to section 46;
- cancellation of the One Month Notice to End Tenancy for Cause dated July 7, 2021 (the “1 Month Notice”) pursuant to section 47;
- cancellation of the Two Month Notice to End Tenancy for Landlord’s Use of Property dated June 14, 2021 (the “2 Month Notice”) pursuant to section 49; and
- authorization to recover the filing fee for this application from the Landlord pursuant to section 72.

The Landlord made two applications for:

- an order of possession for non-payment of rent pursuant to sections 46 and 55;
- an order of possession for Landlord’s use of the residential property pursuant to sections 49 and 55; and
- a monetary order for unpaid rent in the amount of \$3,100 pursuant to section 67.

The Tenants did not attend this hearing scheduled for 11:00 am, although I left the teleconference hearing connection open for the entire hearing, which ended at 11:22 am, in order to enable the Tenants to call into this teleconference hearing. The Landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. 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 testified the Notice of Dispute Resolution Proceeding and some of his evidence ("NODR Package") were served on each of the two Tenants by separate registered mailings on July 22, 2021. The Landlord provided two Canada Post tracking numbers confirming these mailings which are reproduced on the cover of this decision. I find that NODP Packages were served on the Tenants in accordance with section 89 of the Act.

The Landlord stated additional evidence was served on each of the two Tenants by registered mail on September 28, 2021. The Landlord provided two Canada Post tracking numbers confirming these mailings which are reproduced on the cover of this decision. I find the Landlord's additional evidence was served the Tenants in accordance with section 88 of the Act.

The Landlord testified the Tenants did not serve any evidence on the Landlord.

Preliminary Issue – Amendment of Landlord's Monetary Claim

At the hearing the Landlord sought to further amend his application to include a claim for August to November 2021 (inclusive) for rent which he testified remains outstanding.

Rule of Procedure 4.2 states:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

In this case, the Landlord is seeking compensation for unpaid rent that has increased since he first applied for dispute resolution. I find that the increase in the Landlord's monetary claim should have been reasonably anticipated by the Tenants. Therefore, pursuant to Rule 4.2, I order that the Landlord's application be amended to include a claim for August to November 2021 rent for a total of \$14,300.00.

Issues to be Decided

Is the Landlord entitled to:

- an order of possession?
- a monetary order for \$14,300.00?
- recover the filing fee for the Landlord's application?
- retain the security deposit in partial satisfaction of the monetary orders made?

Are the Tenants entitled to:

- an order cancelling the 10 Day Notice?
- an order cancelling the 1 Month Notice?
- an order cancelling the 2 Month Notice?
- recover the filing fee for the Tenants' application?

Background and Evidence

While I have considered the documentary evidence and the testimony of the Landlord, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written fixed term tenancy agreement starting September 15, 2020 and ending September 14, 2021. Monthly rent is \$2,800.00 and is payable on the first of each month. The Tenants paid the Landlord a security deposit of \$1,400.00 which the Landlord still retains.

The Landlord served the Tenants with the 10 Day Notice by registered mail on September 2, 2021. The Landlord submitted the Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. I find that the 10 Day Notice was served on of the Tenants in accordance with section 89 of the Act.

The landlord testified that the Tenants are in arrears as follows:

Date	Owed	Paid	Balance
01-Jun-21	\$2,800.00		\$2,800.00
01-Jun-21		\$2,500.00	\$300.00
01-Jul-21	\$2,800.00		\$3,100.00
01-Aug-21	\$2,800.00		\$5,900.00
01-Sep-21	\$2,800.00		\$8,700.00
01-Oct-21	\$2,800.00		\$11,500.00
01-Nov-21	\$2,800.00		\$14,300.00
Total	\$16,800.00	\$2,500.00	\$14,300.00

The Landlord served the Tenants with the 1 Month Notice by registered mail on August 10, 2021. The Landlord submitted the Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. I find the 1 Month Notice was served on of the Tenants in accordance with section 89 of the Act.

The Landlord served the Tenants with the 2 Month Notice by registered mail on each of the Tenants on July 5, 2021. The Landlord submitted the Canada Post tracking Numbers which are reproduced on the cover of this decision. I find the 2 Month Notice was served on the Tenants in accordance with section 89 of the Act.

For the reasons set out below, it is not necessary for me to elaborate on the basis the Landlord served the 1 Month and 2 Month Notices.

Analysis

Section 26 of the Act states:

- 26 (1)** A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I find that monthly rent is \$2,800.00 and is due on the first of the month. I accept the Tenants paid the Landlord \$2,500.00 in June 2021 and are therefore \$300.00 in rental arrears for that month.

I also accept the Landlord's undisputed testimony the Tenants did not pay any rent for the months of July to November 2021. As such, I find that the Tenants are \$14,300.00 in total arrears as calculated above. The Tenants must compensate the Landlord this amount. Pursuant to section 67 of the Act, I order the Tenants to pay the Landlord \$14,300.00 in satisfaction of the arrears owed.

As such, I find that the 10 Day Notice was issued for a valid reason. I have reviewed the 10 Day Notice and find it complies with the section 52 form and content requirements. Accordingly, pursuant to section 55(1) of the Act, I order that the Tenants provide the Landlord with vacant possession of the rental unit.

As I have already awarded an Order of Possession pursuant to section 55(1) of the Act, it is unnecessary for me to assess the validity of either the 1 Month or 2 Month Notices. The issue is therefore moot.

Pursuant to section 72(2) of the Act, the Landlord may retain the security deposit in partial satisfaction of the monetary orders made above.

Conclusion

Pursuant to section 67 of the Act, I order that the Tenants pay the Landlord \$12,900, representing the following:

Description	Amount
Rental Arrears	\$14,300.00
Security Deposit Credit	-\$1,400.00
Total	\$12,900.00

Pursuant to section 55 of the Act, I order that the Tenants deliver vacant possession of the rental unit to the Landlord within two days of being served with a copy of this decision and attached orders by the Landlord.

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: November 12, 2021

Residential Tenancy Branch