



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNR-DR, OPR-DR, FFL

Introduction

This hearing was set to deal with cross applications. The tenant filed to dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The landlord applied for an Order of Possession and Monetary Order for unpaid rent.

The landlord's agent appeared for the hearing; however, there was no appearance on part of the tenant despite leaving the teleconference call open over 30 minutes.

The landlord confirmed receipt of the tenant's Application for Dispute Resolution, via email. The landlord's agent testified the landlord's responses to the tenant's application were emailed to the tenant and posted to the tenant's door on November 4, 2021. I accepted the landlord's testimony and found the tenant served with the landlord's evidence in a manner that complies with the Act. Accordingly, I admitted the materials of both parties into evidence.

As for the landlord's application, the landlord's agent testified that it was posted to the tenant's door on November 20, 2021. I accepted the unopposed testimony of the landlord and found the tenant duly served with the landlord's Application for Dispute Resolution in a manner that complies with section 89(2) of the Act. Section 89(2) of the Act provides that a landlord may post an Application for Dispute Resolution to a tenant's door where the landlord seeks an Order of Possession; however, a monetary claim must be served in a manner that complies with section 89(1) of the Act and posting an Application for Dispute Resolution to a tenant's door is not one of the permissible methods of service under section 89(1) of the Act.

Despite the landlord's failure to serve the landlord's Application for Dispute Resolution in manner that complies with section 89(1), I shall consider granting the landlord a Monetary Order for unpaid rent under section 55(1.1) of the Act.

Section 55(1) and (1.1) provide as follows:

Order of possession for the landlord

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 light of all of the above, I continued to hear from the landlord's agent with respect to considering whether the landlord is entitled to an Order of Possession under the tenant's application and/or the landlord's application; and, whether the landlord is entitled to a Monetary Order for unpaid rent under the tenant's application.

During the hearing, the landlord's agent requested authorization to retain the tenant's security deposit in partial satisfaction of the unpaid rent. Since such a request is non-prejudicial to the tenant, I agreed to consider such a request in calculating the Monetary Order.

Issue(s) to be Decided

1. Has the tenancy ended for unpaid rent and is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to a Monetary Order for unpaid rent?
3. Is the landlord authorized to retain the tenant's security deposit?
4. Award of filing fee.

Background and Evidence

The one year fixed term tenancy started on July 1, 2021 and the tenant paid a security deposit of \$800.00. The tenant is required to pay rent of \$1600.00 on the first day of every month.

The tenant failed to pay rent for October 2021 and on October 7, 2021 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice") on the tenant's door. The 10 Day notice indicates \$1600.00 was outstanding as of October 1, 2021; however, there was no stated effective date. The tenant filed to dispute the 10 Day Notice on October 15, 2021 citing the following basis for cancellation of the 10 Day Notice:

"Landlord F was aware that rent would be late due to bank freeze on bank account and i told him approximatley when hold was coming off . He was ok with it. Now im getting a 10 day notice Basically after my ex boyfriend caused police to arrive since that hes been threatening me to evict so hes using this against me after he knew my situation and was ok with the late payment"

[Reproduced as written except name of landlord obscured by me for privacy purposes]

The landlord's agent testified that there is a building manager named "F" but that the landlord does not authorize late payment or non-payment of rent. The landlord's agent also testified that the tenant did not ever pay the rent owing for October 2021.

The landlord's agent realized the 10 Day Notice posted on October 7, 2021 was missing an effective date so the landlord re-served the tenant another copy on October 18, 2021 by posting it on the door of the rental unit. The stated effective date on the revised copy reads October 27, 2021.

The landlord testified that despite serving the tenant with a 10 Day Notice on October 7, 2021 and a replacement 10 Day Notice on October 18, 2021 the tenant did not pay the outstanding rent for October 2021. Nor, did the tenant pay any rent for November 2021 or December 2021 and she continues to occupy the rental unit. The landlord also posted a 10 Day Notice to the tenant's door on November 5, 2021 with respect to unpaid rent due on November 1, 2021.

The tenant did not file to dispute the 10 Day Notice served on November 5, 2021 or appear at the hearing to request her Application for Dispute Resolution be amended to dispute the 10 Day Notice posted on November 5, 2021.

Documentary evidence before me included a copy of the tenancy agreement; the 10 Day Notices posted on October 7, 2021; October 18, 2021 and November 5, 2021 along with signed Proof of Services for service of the 10 Day Notices; and, a ledger showing the outstanding rent.

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 to withhold rent. The Act provides very limited and specific circumstances when a tenant may legally withhold rent from the landlord.

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. 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. If a tenant does not pay the outstanding rent or dispute the 10 Day Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the 10 Day Notice.

I accept the unopposed evidence before me that the tenant was required to pay rent of \$1600.00 on the first day of every month pursuant to her tenancy agreement and the tenant has failed to do so for the month of October 2021 onwards. I also accept that the landlord served the tenant with a 10 Day Notice by posting on the tenant's door on October 7, 2021 and a replacement 10 Day Notice was posted on October 18, 2021 to include an effective date.

The tenant filed to dispute the 10 Day Notice dated October 7, 2021. It appears the tenant wanted to pay rent late; but, I heard that she never paid the rent. There was no evidence before me to suggest the tenant had a right to withhold rent from the landlord. Therefore, I dismiss the tenant's application to cancel the 10 Day Notice.

As for the missing effective date on the October 7, 2021 10 Day Notice, a Notice to End Tenancy may be amended by an Arbitrator under section 68 of the Act if a notice to end a tenancy does not comply with section 52, but the Arbitrator is satisfied that:

- the person receiving the notice knew, or should have known, the information that was omitted from the notice, and
- in the circumstances, it is reasonable to amend the notice to include information the parties knew or ought to have known.

The tenant did not take issue with the missing effective date and I find it reasonable to amend the 10 Day notice to reflect an effective date 10 days after the tenant is deemed served with the 10 Day Notice; however, the landlord reacted by issuing a replacement 10 Day Notice with an effective date of October 27, 2021 which is also appropriate action to rectify missing information.

I accept the unopposed evidence before me that the landlord also issued another 10 Day Notice on November 5, 2021 to reflect unpaid rent for November 2021. The tenant did not pay the outstanding rent or dispute the November 5, 2021 10 Day Notice and I heard the tenant has not yet vacated the rental unit.

In light of the above, I find I am satisfied the tenancy has ended for unpaid rent based on any of the three 10 Day Notices before me and the landlord is entitled to regain possession of the rental unit. Therefore, I dismiss the tenant's application and I provide the landlord with an Order of Possession effective two (2) days after service under section 55(1) and/or 55(2) of the Act.

As for the unpaid rent owing to the landlord, having concluded on this date that the tenancy is over due to unpaid rent and having been provided unopposed evidence that the tenant has remained in possession of the rental unit without paying any rent for October 2021 through December 2021, I provide the landlord with a monetary award of \$4800.00 under section 55(1.1) of the Act.

I further award the landlord recovery of the \$100.00 filing fee paid by the landlord.

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the unpaid rent, as I am authorized to do under section 72(2) of the Act.

In keeping with all of the above, I provide the landlord with a Monetary Order in the amount calculated as follows to serve and enforce upon the tenant:

Unpaid rent October 2021 through December 2021	\$4800.00
Filing fee paid by landlord	100.00
Less: security deposit	<u>(800.00)</u>
Monetary Order for landlord	\$4100.00

Conclusion

The tenant's application is dismissed.

The landlord is provided an Ordre of Possession effective two (2) days after service.

The landlord is authorized to retain the tenant's security deposit and is provided a Monetary Order for the balance owing of \$4100.00 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: December 17, 2021

Residential Tenancy Branch