



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDCT, LRE, OLC, FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice"), pursuant to section 46;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67;
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 1:40 p.m. in order to enable the tenants to call into this teleconference hearing scheduled for 1:30 p.m. The landlord and the landlord's spouse attended the hearing and were 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, the landlord's spouse and I were the only ones who had called into this teleconference.

The landlord was advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The landlord testified that they are not recording this dispute resolution hearing.

The landlord confirmed his email address for service of this decision and order.

Rule 7.1 and 7.3 of the Residential Tenancy Branch Rules of Procedure provides in part as follows:

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

The tenants failed to attend this hearing. Pursuant to Rule 7.3 of the Residential Tenancy Branch Rules of Procedure, I dismiss the tenants' application without leave to reapply.

I note that section 55(1.1) of the *Act* requires that when a tenant submits an application for dispute resolution (the "application") seeking to cancel a 10 Day Notice issued by a landlord I must consider if the landlord is entitled to a Monetary Order for unpaid rent if the application is dismissed or the landlord's notice to end tenancy is upheld and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue

1. Is the landlord entitled to a Monetary Order for Unpaid Rent, pursuant to section 55(1.1) of the *Act*?

Background and Evidence

While I have turned my mind to 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 landlord's claims and my findings are set out below.

The landlord provided the following undisputed testimony. This tenancy began on July 1, 2021 and ended on December 5, 2021. Monthly rent in the amount of \$6,200.00 was payable on the last day of each month. The tenants paid the landlord a security deposit of \$3,100.00. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

I note that the tenants confirmed, in their application for dispute resolution, that rent was \$6,200.00 per month and that they paid a security deposit of \$3,100.00.

The landlord testified that the tenants did not pay October 2021's rent on the first day of the month, when it was due and that the tenants have not paid any rent for October, November or December of 2021.

The landlord testified that the tenants were served with the 10 Day Notice in person on October 14, 2021 for failure to pay October 2021's rent. The tenants' application for dispute resolution states that the tenants received the 10 Day Notice on October 14, 2021 and that the delivery was done in person. The tenants filed to dispute the 10 Day Notice on December 16, 2021.

The 10 Day Notice entered into evidence by the landlords was blurry and could not be read. I allowed the landlord 24 hours to upload a legible copy of the 10 Day Notice. The 10 Day Notice states that the tenants must move out of the subject rental property by October 25, 2021. The 10 Day Notice states that the tenants failed to pay rent in the amount of \$6,200.00 that was due on October 14, 2021. The landlord testified that the 10 Day Notice should have read that the tenants failed to pay rent in the amount of \$6,200.00 that was due on October 1, 2021 and that October 14, 2021 was written in error. The landlord testified that throughout the tenancy rent was due on the first day of each month.

The landlord testified that on October 12, 2021, two days before the 10 Day Notice was served, the tenants texted as follows:

This is our official notice. We will be vacating all units in the rental on December 1st of 2021....We have already paid a deposit on a new house and will not be paying rent in the meantime as proper procedure for you to claim this house as your primary residence would require 2 months notice to your tenants. You are welcome to file a claim with the landlord tenancy board if this is something you disagree....

The landlord submitted that he had no intention of claiming the subject rental property was his primary residence and never served the tenants with a Notice to End Tenancy for Landlord's Use of Property or verbally asked the tenants to move. The landlord submitted that:

Tenants are misunderstood that I have refinanced the house and that's why bylaw officers have come by and they misunderstood that I am using house for personal use.

The landlord testified that the tenants did not move out on December 1, 2021 as per the tenants' October 12, 2021 text message. The landlord testified that the tenants moved out on December 5, 2021. The landlord testified that the tenants did not provide a forwarding address.

Analysis

I accept the landlord's undisputed testimony that on October 14, 2021 the tenants were served with a 10 Day Notice for failure to pay October 2021's rent. I find that this service was done in accordance with section 88 of the *Act*. I note that this testimony is supported by the information provided by the tenants in their application for dispute resolution.

I accept the landlord's undisputed testimony that the tenant did not pay October 2021's rent in the amount of \$6,200.00 and did not pay any rent for November or December 2021. I find that the landlord's above undisputed testimony is supported by the tenants' October 12, 2021 text message in which the tenants state that they will not pay rent "in the meantime".

I find that the tenants are not prejudiced by the admittance into evidence of a legible copy of the 10 Day Notice because the tenants' acknowledged in their application for dispute resolution that they received it and were aware of its contents because they applied to cancel it.

Section 68(1) of the *Act* states that if a notice to end a tenancy does not comply with section 52 [*form and content of notice to end tenancy*], the director may amend the notice if satisfied that

- (a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and
- (b) in the circumstances, it is reasonable to amend the notice.

I find that the tenants knew or ought to have known that October 2021's rent was due on the first day of the month and not October 14, 2021 as stated in the 10 Day Notice. The tenancy agreement signed by both parties confirms that rent is due on the first day

of each month and the landlord testified that throughout the tenancy rent was due on the first day of each month. I find that in the circumstances, it is reasonable to amend the 10 Day Notice to say that the tenants did not pay rent in the amount of \$6,200.00 that was due on October 1, 2021.

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. Pursuant to section 26(1) of the *Act*, I find that the tenant was obligated to pay the monthly rent in the amount of \$6,200.00 on the first day of each month. Based on the testimony of the landlord, and the October 12, 2021 text message from the tenants, I find that the tenants did not pay rent in accordance with section 26(1) of the *Act*. I accept the landlord's undisputed testimony that the tenants were not served with a Notice to End Tenancy prior to the 10 Day Notice. I find that the tenants have not proved, on a balance of probabilities, that they were entitled to deduct any amount from rent due to the landlord. I note that pursuant to section 26(1) of the *Act*, rent remains due, even if the landlord has not complied with the *Act*.

Section 55(1) and section 55(1.1) of the *Act* state:

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.

Upon review of the amended 10 Day Notice, I find that it meets the form and content requirements of section 52 of the *Act*.

Since I have dismissed the tenants' application and have found that the amended 10 Day Notice meets the form and content requirements of section 52 of the *Act*, I find that pursuant to section 55(1.1) of the *Act* the landlord is entitled to a monetary order for unpaid rent as follows

Rental period	Amount
October 2021	\$6,200.00
November 2021	\$6,200.00
Per diem from December 1-5, 2021	\$1,000.00
Total	\$13,400.00

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit due to the tenant. I find that the landlord is entitled to retain the tenants' entire security deposit in the amount of \$3,100.00.

Conclusion

The tenants' application is dismissed without leave to reapply.

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
Unpaid rent	\$13,400.00
Less security deposit	-\$3,100.00
Total	\$10,300.00

The landlord is provided with this Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants fail to comply with this Order, this Order may be filed in 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: December 20, 2021

Residential Tenancy Branch