



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RP, LAT, OLC, OPR, MNR, FF

Introduction

This was a cross-application hearing for Dispute Resolution under the *Residential Tenancy Act* (“the Act”).

On August 16, 2021, the Tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 14, 2021. The Tenant also applied for the following relief:

- for an order for the Landlord to make repairs to the rental unit
- to suspend or restrict the Landlords right of entry
- for authorization to change the locks
- for an order for the Landlord to comply with the Act, Regulation, or tenancy agreement.

On August 31, 2021, the Landlords applied for an order of possession for the rental unit based on the issuance of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and due to rent that was not paid in the required time. On November 15, 2021, the Landlord amended their application to include a monetary claim for unpaid rent.

These matters were set for hearing by telephone conference call at 11:00 am on this date. The Landlords attended the hearing; however, the Tenant did not. The line remained open while the phone system was monitored for 23 minutes and the Tenant did not call into the hearing during this time. Therefore, as the Tenant did not attend the hearing by 11:23 am, I dismiss the Tenants’ application without leave to reapply.

The Landlord testified that he served the Tenant with a copy of the Landlords’ Notice of Dispute Resolution Proceeding in person to the Tenant on September 3, 2021. I find that the Notice of Dispute Resolution Proceeding was served to the Tenant in accordance with sections 89 and 90 of the Act.

The hearing proceeded based on the Landlords' application.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to an order of possession and monetary order due to non-payment of rent owing under the tenancy agreement?

Background and Evidence

The Landlord testified that the tenancy began on September 1, 2020. Rent in the amount of \$2,650.00 is due to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$1,325.00 and a pet damage deposit of \$500.00.

10 Day Notice

The Landlord testified that the Tenant failed to pay the rent owing under the tenancy agreement when it was due for August 2021.

The Landlord testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 14, 2021 ("the 10 Day Notice"). The 10 Day Notice indicates the Tenant failed to pay \$2,650.00 that was due on August 1, 2021. The Landlord provided a copy of the 10 Day Notice.

The 10 Day Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice. The Tenant's application indicates they received the 10 Day Notice on August 14, 2021 and they disputed the 10 Day Notice on August 16, 2021 within the required time period.

The Tenant failed to attend the hearing to proceed with their application and has moved out of the rental unit.

The Landlord testified that the Tenant moved out of the rental unit on November 17, 2021. The Landlord testified that the Tenant has permitted unauthorised people to live in the rental unit. The Landlord testified that they do not have a tenancy agreement with

the unauthorized people and the Landlord has not accepted any rent payments from the unauthorized people.

The Landlord testified that the Tenant did not pay the rent owing under the tenancy agreement for August 2021 within five days of receiving of the 10 Day Notice. The Landlord testified that the Tenant has not paid any rent since receiving the 10 Day Notice.

The Landlord testified that the Tenant has also failed to pay the rent owing under the tenancy agreement for the months of August, September, October, and November 2021.

The Landlord is requesting an order of possession for the rental unit and a monetary order for unpaid rent in the amount of \$10,600.00.

Analysis

Section 26 of the Act provides that a Tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the 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.

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I find that the Tenant failed to pay the rent owing under the tenancy agreement and failed to pay the rent within five days of receiving the 10 Day Notice.

The Tenant failed to attend the hearing and their application is dismissed.

Under section 55 of the Act, when a tenant's application to cancel a notice to end tenancy is dismissed and I am satisfied that the notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the 10 Day Notice complies with the requirements for form and content, and I find that the Landlord is entitled to an order of possession effective two (2) days, after service on the Tenant or other occupant or person occupying the above noted rental unit. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

I find that the Tenants have failed to pay the rent owing under the tenancy agreement. I find that the Tenant owes the Landlord \$10,600.00 in unpaid rent for the months from August to November 2021.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I find that the Landlord has established a total monetary claim of \$10,700.00 comprised of \$10,600.00 in unpaid rent for the above-mentioned months and the \$100.00 fee paid by the Landlord for this hearing. This monetary 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.

Conclusion

The Tenant failed to pay the rent owing under the tenancy agreement within five days of receiving a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

The Tenant's application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities is dismissed.

The Landlords are granted an order of possession for the rental unit effective two (2) days after service on the Tenant and/or any unauthorized occupants.

The Landlord is granted a monetary order for unpaid rent and the cost of the filing fee in the amount of \$10,700.00.

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