



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR RR

Introduction

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

- the cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent (the "**Notice**") pursuant to section 46;
- an order to allow the tenants to reduce rent for repairs, services or facilities

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 11:32 am in order to enable the tenants to call into this teleconference hearing scheduled for 11:00 am. The landlord and his son ("**AA**") 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, AA, and I were the only ones who had called into this teleconference.

AA testified that the landlord served the tenants with the documentary evidence he intended to reply on at the hearing.

Preliminary Issue – Abandonment

AA advised me that the tenants abandoned the rental unit on November 29, 2021. He testified that the neighbours alerted him earlier that week that the tenants appeared to be moving out, and that he attended the rental unit on November 26, 2021 to post a notice of entry on the door of the rental unit. He testified that he did not see anyone in the rental unit on November 26, 2021. He attended the rental unit on November 29, 2021 and found it vacant.

As such, per section 44(1)(d) of the Act, I find that the tenancy has ended as of November 29, 2021. I grant the landlord an order of possession effective immediately.

Despite this, I must still assess the validity of the Notice, as, if I uphold it, the landlord may be entitled to a monetary order to recover rental arrears per section 55(1.1) of the Act.

Preliminary Issue – Effect of Tenants' Non-Attendance

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy

As such, despite this being the tenants' application, the landlord bears the evidentiary burden to prove that the Notice is valid.

However, the tenants bear the burden to show that they are entitled to a rent reduction. As they have failed to attend the hearing, I find that they have failed to discharge this burden. Pursuant to Rule of Procedure 7.4, the tenants (or their agent) must attend the hearing and present their evidence for it to be considered. As this did not occur, I have not considered any of the documentary evidence submitted by the tenants to the Residential Tenancy Branch in advance of the hearing. I dismiss their application for a rent reduction, without leave to reapply.

Issues to be Decided

Are the tenants entitled to an order cancelling the Notice?

If not, is the landlord entitled to a monetary order equal to the amount of rent arrears?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their 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 tenancy agreement starting June 1, 2020. Monthly rent was \$2,500 and was payable on the first of each month. The tenants paid the landlord a security deposit of \$1,250, which the landlord continues to hold in trust for the tenants.

AA testified that in February 2021 the landlord agreed to defer his entitlement to a portion of the monthly rent. AA testified that tenant KW worked in catering, and that his business was suffering as a result of the COVID-19 pandemic. AA testified that the

landlord agreed to help the tenants by requiring them to pay \$1,400 per month in rent when it was due and deferring his entitlement to the balance (\$1,100 dollars) to a later date.

AA testified that in July 2021, the landlord told the tenants that he required them to repay the deferred rent, and that he would no longer be allowing them to defer any portion of the rent. The tenants paid no monthly rent for the months of August, September, October, or November 2021.

On August 1, 2021, the landlord served the tenants with the Notice. It specified an effective date of August 11, 2021. The Notice was dated August 11, 2021, however AA stated that this was a typo. The Notice also listed rental arrears as \$5,000. AA testified that, despite being entitled to \$9,100 as of August 1, 2021 (\$1,100 per month for February to July plus \$2,500 for August), the landlord was prepared to waive his entitlement to a large portion of that in an effort to be able to recover some portion of the money owed. At the hearing, EA stated, and the landlord confirmed, that the landlord was abandoning his claim to any amount over \$5,000 that was owed by the tenants as of August 1, 2021 for rental arrears.

The tenants disputed the notice on August 1, 2021. They have not paid any part of the arrears, or any rent whatsoever, since the date the Notice was issued.

I note that the landlord did not upload a copy of the Notice into evidence prior to the hearing. I granted the landlord leave to upload a copy during the hearing, as I was confident that the tenants had received it prior to the hearing, given that they made this application to dispute the Notice and indicated that they had been served with it on August 1, 2021.

Analysis

Based on the tenancy agreement submitted into evidence, I find that monthly rent was \$2,500.

I accept the undisputed testimony of AA, in its entirety. I find that the landlord agreed to allow the tenants to defer payment of \$1,100 of monthly rent starting February 2021. He withdrew this deferment effective August 1, 2021. I find that the tenants have only paid \$1,400 rent for each of the months of February to July 2021 (inclusive). This amounts to \$6,600 in deferred rent. The tenants have not repaid any portion of this. I also find that the tenants did not pay any part of August 2021 rent. As such, I find that, as of August 1, 2021, the tenants were \$9,100 in arrears.

The landlord has waived entitlement to \$4,100 of this amount. Accordingly, as of August 1, 2021, I find that the tenants owed the landlord \$5,000.

I find that the Notice was served on the tenants on August 1, 2021, notwithstanding the Notice being dated August 11, 2021. This is an obvious typographic error, given that the tenants disputed the Notice on August 1, 2021. Per section 68(1) of the Act, I find it reasonable to amend the Notice to include the correct date, as the tenants reasonably should have known the date they were served with the Notice.

I find that the Notice otherwise complies with the section 52 form and content requirements. As such, I find the Notice is valid and dismiss the tenants' application to have it cancelled.

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

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.

As I have found that the Notice meets the section 52 form and content requirements and as I have upheld the Notice, I must grant an order requiring the payment of unpaid rent.

As stated above, as of August 1, 2021, the tenants owed \$5,000 in rental arrears (the landlord having abandoned his claim for any excess). Additionally, I accept AA's testimony that the tenants have not paid any rent for September, October, or November 2021. I find that they are in arrears of \$7,500 for this period.

In total, the tenants are \$12,500 in rental arrears. As such, I order them to pay this amount to the landlord.

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

Conclusion

I dismiss the tenants' application, in its entirety, without leave to reapply.

Pursuant to sections 55, 65, and 72 of the Act, I order that the tenants pay the landlord \$11,250, representing the following:

Description	Amount
Rent Arrears	\$12,500.00
Security Deposit Credit	-\$1,250.00
Total	\$11,250.00

Pursuant to section 62 of the Act, I find that the tenants have abandoned the rental unit and issue an order of possession to the landlord effective immediately.

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 3, 2021

Residential Tenancy Branch