



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a tenancy dispute. The Tenants applied for an order to cancel a 10 Day Notice to End Tenancy For Unpaid Rent, dated November 5, 2021 (the 10 Day Notice).

The Landlord and the Tenants who attended the hearing were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were also made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The Tenants testified they served their Notice of Dispute Resolution Proceeding (NDRP) and evidence on the Landlord by registered mail on November 12, 2021. The Landlord confirmed receipt of the NDRP and evidence. I find the Tenants served their NDRP and evidence sent on November 12, 2021 in accordance with section 89 of the Act. The Tenants also served evidence on the Landlord by email on January 11, 2022. As the late evidence was served eight days after the applicant evidence deadline, I advised the parties I would not consider it.

The Landlord testified they served their responsive evidence on the Tenants by email on January 11, 2021, and the same evidence by registered mail on January 13, 2021. As January 11, 2021 was one day past the respondent evidence deadline, I advised the parties I would consider the Landlord's evidence, which the Tenants confirmed they received. I find the Landlord served their evidence on the Tenants in accordance with section 88 of the Act.

Preliminary Matter

The Tenants testified they vacated the rental unit on January 1, 2022. The Landlord indicated he was not seeking an order of possession.

Issue to be Decided

Is the Landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The parties agreed on the following particulars of the tenancy. It began on September 1, 2020; rent is \$2,400.00 a month, due on the first of the month; and the Tenants paid a security deposit of \$1,200.00 and a pet deposit of \$1,200.00, which the Landlord still holds.

At the outset of the hearing, the Tenants testified they were not aware of the hearing, and thought that it had been withdrawn. I explained the hearing was on the Tenants' application to dispute the 10 Day Notice, and that the withdrawn hearing was on a different matter.

A copy of the 10 Day Notice was submitted as evidence. The Landlord testified they served the 10 Day Notice on the Tenants by email on November 5, 2021. The Tenants confirmed receiving the Notice the same day.

The 10 Day Notice is signed and dated by the Landlord, gives the address of the rental unit, states an effective date, states the reason for ending the tenancy, and is in the approved form. The 10 Day Notice indicates the tenancy is ending because the Tenants failed to pay rent in the amount of \$4,800.00, due October 1, 2021.

The Landlord testified that on October 1, 2021, when rent was due, the Tenant sent the Landlord a text, a copy of which was submitted as evidence, in which she states that the Tenants are having financial difficulty, and the Tenant is trying to get a loan to pay for rent.

The Landlord noted that the Tenants stated in their application they had not paid rent, and provided:

I had recently let her landlord know that we were struggling financially via text. We are struggling to find a new home as well as pay rent and arrange for a new place to live. I have two small children and a sick mother in law who do we support I thought my landlord was understanding to our situation and did not speak to me before filing. We have had some car problems too. We are owed one month free as well as our damage and pet deposit which we were told would cover an additional month.

The Landlord testified that the Tenants were behind on rent as follows:

October 2021	\$2,400.00
November 2021	\$2,400.00
December 2021	\$2,400.00
Total	\$7,200.00

The Tenants testified they had encountered financial difficulties and had not paid rent for October, November, or December 2021.

The Tenants testified they had been served with a Two Month Notice, and that the Landlord must give them one month free rent.

Analysis

Based on the testimony of the Landlord, I find they served the 10 Day Notice on the Tenants in accordance with section 88 of the Act.

I find the 10 Day Notice meets the form and content requirements of section 52 of the Act.

The 10 Day Notice, dated November 5, 2021, indicates that rent in the amount of \$4,800.00 was due on October 1, 2021, not November 1, 2021. Based on the affirmed testimony of the Landlord and Tenants that the Tenants did not pay rent for October or November 2021, I believe the “due on” date of October 1, 2021 is an error. Page 3 of the 10 Day Notice states: “An error in this Notice or an incorrect move-out date on this Notice does not make it invalid.” As the Tenants raised no question about the due date in the hearing, I find the incorrect due date indicated on the 10 Day Notice did not cause confusion, and does not invalidate the Notice.

Section 46 states that within 5 days after receiving a notice for non-payment of rent, the tenant may pay the overdue rent, or dispute the notice. As the Tenants testified they received the 10 Day Notice on November 5, 2021, and they applied to dispute the Notice the on November 6, 2021, I find the Tenants applied to dispute the 10 Day Notice within the deadline set by the Act.

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, regulations, or the Tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent.

I accept the Tenants' and Landlord's affirmed testimony that the Tenants did not pay rent for October, November, or December 2021. There is insufficient evidence before me to demonstrate the Tenants had a legal right to withhold payment of rent.

Pursuant to section 55 (1.1) of the Act, I find the Tenants owe the Landlord unpaid rent totalling \$7,200.00.

In accordance with section 72 of the Act, I allow the Landlord to retain \$1,200.00 of the Tenants' security deposit and \$1,200.00 of their pet deposit in satisfaction of this monetary award, as follows:

Rent owing	\$7,200.00
Security deposit	-\$1,200.00
Pet deposit	-\$1,200.00
Outstanding rent	\$4,800.00

I grant the Landlord a monetary order for \$4,800.00 for the remaining unpaid rent owed by the Tenants.

As the issue of the Two Month Notice is not before me, I make no further finding regarding the Tenants' last month's rent.

Conclusion

The Tenants' application is dismissed. The 10 Day Notice is upheld.

The Landlord is granted a monetary order in the amount of \$4,800.00 for unpaid rent.

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: January 20, 2022

Residential Tenancy Branch