



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Ewald Enterprises Ltd
and [tenant name suppressed to protect privacy]

DECISION

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

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear two crossed applications regarding a residential tenancy dispute.

The Tenant applied for an order to cancel a 10 Day Notice to End Tenancy For Unpaid Rent, dated November 2, 2021 (the 10 Day Notice).

The Landlords applied for:

- an order of possession, having issued the 10 Day Notice;
- a monetary order for rent not paid in the required time; and
- the filing fee.

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

The Tenant testified they served their Notice of Dispute Resolution Proceeding (NDRP) on the Landlords in person on November 18, 2021; the Landlords confirmed they received it. I find the Tenant served the Landlords in accordance with section 89 of the Act.

The Landlords testified they served their Notice of Dispute Resolution Proceeding (NDRP) and evidence on the Tenant in person on November 17, 2021; the Tenant confirmed they received it. I find the Landlords served the Tenant in accordance with section 89 of the Act.

Issues to be Decided

- 1) Is the Tenant entitled to an order cancelling the 10 Day Notice?
- 2) If not, are the Landlords entitled to an order of possession?
- 3) Are the Landlords entitled to a monetary order for unpaid rent?
- 4) Are the Landlords entitled to the filing fee?

Background and Evidence

The parties agreed on the following particulars of the tenancy. It began on September 2, 2021; rent is due on the first of the month; and the Tenant paid a security deposit of \$767.50, which the Landlord still holds.

The Tenant testified that rent is \$1535.00 a month, noting that they paid a security deposit that was half the rent, or \$767.50. The Landlord testified that rent is \$1,600.00 a month, comprised of \$1,535.00, plus \$65.00 for parking. The Landlord submitted as evidence a copy of the signed tenancy agreement. The document states that the "total rent" of \$1,600.00 is comprised of \$1,535.00 "basic living space," and \$65.00 for parking.

A copy of the 10 Day Notice was submitted as evidence. The Landlord testified they served the 10 Day Notice on the Tenant in person on November 2, 2021; the Tenant confirmed receiving it as described.

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 Tenant failed to pay rent in the amount of \$1,600.00, due November 1, 2021.

The Landlords submitted as evidence a Direct Request Worksheet, indicating that rent was due on November 1, 2021, a partial rent payment of \$767.00 was received on October 31, 2021, and the balance rent owed is \$833.00.

The Landlords testified the Tenant has not paid rent for December 2021 or January 2022.

The Tenant testified that the Landlords are correct regarding the rent owing, and that the Tenant's roommate moved out without notice.

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

The Act defines “rent” as “money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit, for the use of common areas and for services or facilities.”

I find parking to be a facility, as referred to in the Act’s definition above. I also note that the tenancy agreement, stating that “total rent” is \$1,600.00, comprised of \$1,535.00 for “basic living space,” and \$65.00 for parking, was signed by each of the two Tenants.

Therefore, I accept the Landlord’s argument that the rent is \$1,600.00.

Based on the evidence before me, and on a balance of probabilities, I make the following findings:

I find that the tenancy agreement requires the Tenant to pay the Landlords rent of \$1,600.00 each month.

I find that the Landlords served the Tenant the 10 Day Notice in person on November 2, 2021, and in accordance with section 88 of the Act. I find that the 10 Day Notice meets the form and content requirements of section 52.

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. The Residential Tenancy Branch Rules of Procedure definition for “days” states that “if the time for doing an act in a government office (such as the Residential Tenancy Branch or Service BC) falls or expires on a day when the office is not open during regular business hours, the time is extended to the next day that the office is open.” The Tenant testified they received the 10 Day Notice on November 2, 2021, and she applied to dispute the Notice on Monday, November 8, 2021. The fifth day after the Tenant received the 10 Day Notice was Sunday November 7, 2021. As neither the Residential Tenancy Branch nor Service BC offices are open on weekends, I find the Tenant applied to dispute the 10 Day Notice within the deadline set by the Act.

I accept the Landlords' evidence and affirmed undisputed testimony that the Tenant owes partial rent for November 2021, and all of the rent for December 2021 and January 2021.

There is insufficient evidence before me to demonstrate the Tenant had a legal right to withhold payment of rent.

I find that the tenancy is ending because the Tenant did not pay rent when due. I find that the Landlords are entitled to an order of possession.

Pursuant to section 55 (1.1) of the Act, I find the Tenant owes the Landlord unpaid rent totalling \$4,033.00, as follows:

| Month | Monthly rent | Partial payment | Monthly outstanding |
|-------------------------------|--------------|-----------------|---------------------|
| November 2021 | \$1,600.00 | \$767.00 | \$833.00 |
| December 2021 | \$1,600.00 | \$0.00 | \$1,600.00 |
| January 2022 | \$1,600.00 | \$0.00 | \$1,600.00 |
| Total outstanding rent | | | \$4,033.00 |

In accordance with section 72 of the Act, I allow the Landlords to retain \$767.50 of the Tenant's security deposit in partial satisfaction of the amount owed to the Landlords by the Tenant.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlords are successful in their application, I order the Tenant to pay the \$100.00 filing fee the Landlords paid to apply for dispute resolution.

I find the Landlords are entitled to a monetary order in the amount of \$3,365.50, as follows:

| | |
|------------------------|-------------------|
| Total outstanding rent | \$4,033.00 |
| Security deposit | -\$767.50 |
| Filing fee | \$100.00 |
| Total | \$3,365.50 |

Conclusion

The Tenant's application is dismissed; the 10 Day Notice is upheld.

The Landlords' application is granted.

The Landlords are granted an order of possession which will be effective two days after it is served on the Tenant.

The Landlords are granted a monetary order in the amount of \$3,365.50.

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 26, 2022

Residential Tenancy Branch