



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RR, RP, OPR, MNR, FFL

Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application is seeking orders as follows:

1. For an order of possession pursuant to section 46 and 55 of the Act;
2. For a monetary order for unpaid rent; and
3. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice"), issued on September 4, 2021;
2. To have the landlord make repairs to the rental unit;
3. For a rent reduction for repairs not made; and
4. To suspend or set conditions on the landlord's right to enter the rental unit.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing. All parties confirmed under affirmation that they were not recording the hearing.

Preliminary and Procedural matters

In this case, the parties were at a previous hearing held on June 1, 2021. At the hearing the tenant's application to cancel a One Month Notice for Cause was granted.

The balance of the tenant's application was not considered and dismissed with leave to reapply. I have noted the filed number on the covering page of this decision.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant's request to set aside the Notice. The balance of the tenant's application is dismissed, with leave to re-apply; however, this may be moot should the tenancy legally end under the Act as this is related to the tenancy continuing.

I will consider the landlord's application as it for an order of possession and a monetary order for the unpaid rent. This is related to the tenant's application to cancel the Notice and I must consider both these issues under section 55 of the Act, even if the landlord did not make their application.

Issues to be Decided

Should the Notice be cancelled?
Is the landlord entitled to an order of possession?
Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The tenancy began on December 1, 2020. Rent in the amount of \$1,390.00 was payable on the first of each month. A security deposit of \$695.00 was paid by the tenant. Filed in evidence is a copy of the tenancy agreement.

The tenant testified that they received the Notice. The tenant stated that they have not paid any rent for April, May, June, July, August, September, October, November, December of 2021 and have not paid any rent for January 2022. Filed in evidence is a copy of the Notice.

The tenant testified that at the previous hearing held on June 1, 2021 and the decision made on June 3, 2021 the Arbitrator ordered that they did not have to pay any rent to the landlord.

The landlord's agent testified that the tenant has not paid any rent since April 2021 and seeks an order of possession and a monetary order for 10 months of unpaid rent \$13,900.00.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this 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.

Upon review of the Notice, I find the Notice is completed in accordance with the requirements of section 52 of the Act.

Under the legislation the tenant may dispute the Notice for specific reasons, such as they have proof that their rent was paid or that the tenant had the right under the Act to deduct all or a portion from their rent, such as an order from an Arbitrator.

In this case, I have reviewed the previous decision made on June 3, 2021. I find the tenant is providing false testimony as the Arbitrator did not make an order that the tenant was entitled to withhold any amount from the rent for repairs. At that time the tenant's application for a rent reduction for repairs was dismissed with leave to reapply.

Although the tenant filed an application for dispute resolution within the time limit permitted under the Act, I find the tenant's application had no merit as the tenant admitted rent was not paid within 5 days after receiving the Notice and has failed to pay all subsequent rent. The tenant did not have the right under the Act to deduct any portion from the rent and provided false testimony on this issue at this hearing.

I find the Notice is valid and remains in full force and effect. I find the tenancy legally ended on September 15, 2021, the date in the Notice and the tenant is overholding the

premises on an occupancy basis. Therefore, I dismiss the tenant's application without leave to reapply.

As the tenant's application is dismissed, I find the landlord is entitled to an order of possession, pursuant to section 55 of the Act.

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.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant. 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 the landlord is entitled to a monetary order, pursuant to section 55(1.1) as the tenant admitted they have not paid rent in ten (10) months. I find the landlord is entitled to recover unpaid rent in the amount of **\$13,900.00**.

I find that the landlord has established a total monetary claim of **\$14,000.00** comprised of the above described amount and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$695.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$13,305.00**.

This 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's application is dismissed. The landlord's application for an order of possession and a monetary order are granted.

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 24, 2022

Residential Tenancy Branch