



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, FFT
OPR, OPC, MNRL-S, FFL

Introduction

This hearing was scheduled to convene at 9:30 a.m. this date by way of conference call concerning applications made by the tenant and by the landlord, which have been joined to be heard together.

The tenant has applied for an order cancelling a notice to end the tenancy for landlord's use of property; an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The landlord has applied for an Order of Possession for unpaid rent or utilities; an Order of Possession for cause; a monetary order for unpaid rent or utilities; an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant.

The landlord attended the hearing with Legal Counsel. The landlord's spouse and son also attended, and Legal Counsel advised that the landlord's son acted as agent for the landlord during this tenancy. The landlord's son gave affirmed testimony, and Legal Counsel provided oral submissions.

However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony, and no one for the tenant joined the call. The landlord has provided a Canada Post cash register receipt dated December 15, 2021 as well as a Registered Domestic Customer Receipt addressed to the tenant, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

At the commencement of the hearing, the landlord's Legal Counsel indicated that the tenant vacated the rental unit on January 7, 2022 in accordance with a Mutual Agreement to End Tenancy, a copy of which has been provided for this hearing, however the landlord still seeks an Order of Possession. The landlord also withdraws the application for an order permitting the landlord to keep the security deposit. No evidence was lead with respect to the landlord's application for an Order of Possession for cause, and I dismiss that portion of the landlord's application.

Since the tenant has not joined the hearing, I dismiss the tenant's application in its entirety without leave to reapply.

Issue(s) to be Decided

The issues remaining to be decided are:

- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?

Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on April 1, 2021 and was to revert to a month-to-month tenancy after April 1, 2022. Rent in the amount of \$500.00 was payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$250.00, all of which has been returned to the tenant. The rental unit is 1 of 4 single rooms in the landlord's basement, with shared kitchen and bathroom in a common area. The landlord's family live in the upper level of the home.

Rent was usually paid by e-transfer, and in December, 2021 the landlord's agent got a notification of an e-transfer, but could not access it without a new passcode from the tenant. The landlord's agent was unable to get it from the tenant, despite the landlord's agent sending a photograph to the tenant of the landlord's agent attempting to use a passcode and the system telling him it was wrong. The tenant did not provide it, so the landlord's agent issued a notice to end the tenancy for unpaid rent.

The landlord has provided a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated December 2, 2021 with an effective date of vacancy of December 15,

2021 for unpaid rent in the amount of \$500.00 that was due on December 1, 2021. The landlord's agent testified that it was served on December 2, 2021 by putting it on the door of the rental unit and a copy in the mailbox. The tenant has not paid the rent, but vacated the rental unit on January 7, 2022.

The landlord seeks an Order of Possession and a monetary order for the unpaid rent, as well as recovery of the \$100.00 filing fee. Although the landlord has possession, the tenant has left some items in the rental unit.

Analysis

The *Residential Tenancy Act* specifies that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the Notice given is in the approved form. I have reviewed the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and I find that it is in the approved form and contains information required by the *Act*. Therefore, I grant an Order of Possession in favour of the landlord. Since the tenant has vacated the rental unit and has signed a Mutual Agreement to End Tenancy effective January 7, 2022, I grant the Order of Possession effective immediately.

I also accept the undisputed testimony of the landlord that the tenant failed to pay rent for the month of December, 2021, and I grant a monetary order in favour of the landlord in the amount of \$500.00.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety without leave to reapply.

The landlord's application for an Order of Possession for cause is hereby dismissed.

The landlord's application for an order permitting the landlord to keep all or part of the security deposit is hereby dismissed.

I hereby grant an Order of Possession in favour of the landlord effective immediately.

I hereby grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$600.00.

This order is final and binding and may be enforced.

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 27, 2022

Residential Tenancy Branch