



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

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

- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent (the "**Notice**") pursuant to section 46;

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 1:55 p.m. in order to enable the tenants to call into this teleconference hearing scheduled for 1:30 p.m. The landlord's agent (the "**landlord**") 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 and I were the only ones who had called into this teleconference.

The landlord testified that she served tenant, GP with copies of her evidence by posting the notice to the door on February 9, 2022 at 2:35 p.m. A photo has been submitted into evidence.

At the outset, I advised the landlord of rule 6.11 of the Rules of Procedure (the "**Rules**"), which prohibits participants from recording the hearing. The landlord confirmed that they were not recording the hearing.

I also advised the landlord that pursuant to Rule 7.4, I would only consider written or documentary evidence that was directed to me in this hearing.

Preliminary Issue #1: Service of Documents

The landlord testified that the tenants did not serve the documents in accordance with the service provisions. The tenant put some partial information through a mail slot in the door but did not submit the 10 Day Notice, the evidence she was relying on at this hearing etc. The landlord submitted a photo of how and what evidence was served to the landlord by the tenant.

Based on the documentary evidence, written submission, and the oral testimony of the landlord, and in accordance with sections 89 and 90 of the Act, I find that:

- 1) the landlord has not been properly served with the notice of dispute resolution package which pertain to the tenant's application for a monetary order.

Accordingly, I dismiss the tenants' claim for a monetary order.

Preliminary Issue #2 -Application Dismissed

The tenant did not attend the hearing.

Rules 7.1 and 7.3 of the Rules of Procedure provide as follows:

Rule 7- During the Hearing

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party or dismiss the application, with or without leave to re-apply.

Further, Rule 7.4 states:

Rule 7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Accordingly, in the absence of any attendance at this hearing by the applicant (tenant) pursuant to Rule 7.4 as provided above, I order the tenant's application to cancel the 10-Day Notice dismissed, without leave to reapply.

Preliminary Issue #3: Amending Tenants on the Tenancy Agreement

Two tenants were listed on the Tenancy Agreement. The landlord stated that tenant MP vacated the premises on December 29, 2021, as confirmed by the "One Tenant Vacating and/or Transfer of Security Deposit" form filled out and signed by both tenants and the landlord. As tenant MP no longer resides on the premises and is no longer on the tenancy agreement, I have amended the file to reflect this change.

I note s. 55 of the Act requires that when a tenant applies for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is

entitled to an order of possession, and/ or a monetary order if the application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the Act.

Preliminary Issue #4: Predictable Amendment

The 10 Day Notice requested a monetary order for unpaid rent in the amount of \$1735.00 as of December 10, 2021. At the hearing the landlord stated the amount does not include outstanding rent from January 1, 2022 through February 1, 2022, inclusive, in the additional amount of \$3470.00 plus applicable non-refundable fees. The landlord requested an amendment to reflect the current outstanding balance of \$5355.00.

Policy Guideline #23 "Amending an Application for Dispute Resolution" subsection F provides:

F. PREDICTABLE AMENDMENTS

In accordance with rule 4. 2 (Amending an application at the hearing), when the amount of rent owing has increased since the time the application initially was filed, or in other circumstances that can reasonably be anticipated, the application may be amended through an oral request at the hearing. If such an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be filed or served.

I grant the landlord's request and amend the application to reflect the current outstanding balance of \$5355.00.

Issues to be Decided

Is the landlord entitled to:

- 1) an order of possession;
- 2) a monetary order for \$5355.00;
- 3) retain the security deposit in partial satisfaction of the monetary orders made?

Background and Evidence

While I have considered the documentary evidence and the testimony of the landlord, not all details of her submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The parties entered into a written fixed term tenancy agreement starting September 15, 2021. Monthly rent is \$1735.00 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$867.50 and a pet damage deposit of \$867.50. The landlord still retains these deposits.

The landlord testified that the tenant has not paid rent since December 1, 2021. A 10 Day Notice was issued on December 10, 2021. The landlord has submitted a ledger showing the outstanding rent, the NSF charges, and the administration fee as reproduced below.

DATE	RENT	NSF FEE	ADMIN FEE	TOTAL OWED
December 1, 2021	\$1735.00	\$25.00	\$25.00	\$1785.00
January 1, 2022	\$1735.00	\$25.00	\$25.00	\$3570.00
February 1, 2022	\$1735.00	\$25.00	\$25.00	\$5355.00

The landlord explained that rent is paid online through a payment portal. Once an amount is entered it is accepted as a payment until the other financial institution determines that there are insufficient funds to transfer. It then is returned NSF>

The landlord testified that the tenant has “given notice” to move effective February 28, 2022; however, the landlord is skeptical as the tenant has not scheduled an inspection.

The landlord is requesting an order of possession and a monetary order for unpaid rent and the fees.

Analysis

As set out in the Preliminary Issues, the tenant’s application is dismissed without leave to reapply. The tenant failed to attend the hearing and the tenant’s service of the Notice of Dispute did not conform to the legislative requirements.

The landlord provided ledger evidence that the last rent payment was made November 1, 2021. The tenant has not paid rent in December, January, and February. The landlord is requesting payment of the rental arrears and a monthly administration fee of \$25.00 and a NSF fee of \$25.00 per month.

Pursuant to s. 46 of the *Act*, the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent. I have reviewed the Notice and find that it complies with the form and content requirements set out under s. 52 of the *Act*.

Residential Tenancy Regulation, “Non-refundable fees charged by the landlord” reads, in part, as follows:

- 7 (1) A landlord may charge any of the following non-refundable fees:
 - (c) a service fee charged by a financial institution to the landlord for the return of a tenant’s cheque;
 - (d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant’s cheque by a financial institution or for late payment of rent.
- (2) A landlord must not charge the fee described in paragraph (1)(d)

or (e) unless the tenancy agreement provides for that fee.

Clause 20 in the “addendum to Residential Tenancy Agreement- Additional Standard lease Terms” reads as follows:

Arrears: all rent and fees owing under this Agreement must be received by the Landlord on or before the first calendar day of each month. Payment of rent in full and on time is a material term of this Agreement. The Landlord may charge the Tenant a non-refundable administration fee of **\$25.00** for each late payment of all or a portion of any rent, fee, or amount owing under this Agreement, and/or a returned or non-sufficient fund (“N.S.F.”) cheque, in addition to any other service fees charged to the Landlord by a financial institution.

The \$25.00 administration fee is included in the Tenancy Agreement. Pursuant to Residential Tenancy Regulation 7, I find the landlord is entitled to the \$25.00 administration fee and the \$25.00 NSF fee in addition to the rental arrears.

The 10 Day Notice has an effective date of December 23, 2021. For the purposes of granting repayment of unpaid rent, this is money that is due and owing *during* the tenancy – this is up until the end of the tenancy. For this purpose, I apply s. 68(2) of the Act and order the end-of-tenancy-date to be February 28, 2022.

Pursuant to section 72(2) of the Act, the landlords may retain the security and pet damage deposit in partial satisfaction of the monetary orders made above.

Calculation:

$$(\$875.50 \times 2 \text{ (security deposit and pet damage deposit)}) = \$1735.00$$
$$\$5355.00 - \$1735.00 = \underline{\underline{\$3620.00}}$$

The landlord is entitled to a monetary order in the amount of \$3620.00.

Pursuant to s. 55 of the Act, the landlord is entitled to an Order of Possession.

Conclusion

Pursuant to sections 62, 65, 67, and 72 of the Act, I order that the tenant pay the landlord \$3620.00, representing the following:

$$\$5355.00 \text{ (rental arrears and fees)} - \$1735.00 \text{ (pet and security deposit)} = \underline{\underline{\$3620.00}}$$

Pursuant to section 55 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlords within two (2) days of being served with a copy of this decision and attached orders.

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: February 25, 2022

Residential Tenancy Branch