



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LRE, CNC, CNR

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on October 04, 2021. The Tenant applied as follows:

- To suspend or set conditions on the Landlord's right to enter the rental unit
- To dispute a One Month Notice to End Tenancy for Cause dated September 29, 2021 (the "One Month Notice")
- To dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 10, 2021 (the "10 Day Notice")

The Advocate for the Tenant appeared at the hearing. The Tenant did not appear at the hearing. The Landlord and their Agent (the "Landlords") appeared at the hearing. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). The parties provided affirmed testimony.

Pursuant to rule 2.3 of the Rules, I told the Advocate at the outset that I would consider the dispute of the One Month Notice and 10 Day Notice and dismiss the request to suspend or set conditions on the Landlord's right to enter the rental unit with leave to re-apply because it is not sufficiently related to the dispute of the One Month Notice and 10 Day Notice. The request to suspend or set conditions on the Landlord's right to enter the rental unit is dismissed with leave to re-apply. This decision does not extend any time limits set out in the *Residential Tenancy Act* (the "Act").

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Landlords confirmed receipt of the hearing package and took no issue with service or admissibility of the Tenant's evidence.

The Advocate had not received the Landlord's evidence. The Landlords testified that their evidence was sent to the Tenant at the rental unit by registered mail on February 03, 2022 and that Tracking Number 191 relates to this. The Landlord had submitted a registered mail receipt with Tracking Number 191 on it. I looked Tracking Number 191 up on the Canada Post website which shows the package has not been picked up.

Pursuant to rule 3.15 of the Rules, the Landlords were required to serve their evidence on the Tenant not less than seven days before the hearing. Pursuant to the definition of "Days" in the Rules, the Landlords were required to serve their evidence on the Tenant such that the Tenant received it February 03, 2022. I accept based on the undisputed testimony of the Landlords, registered mail receipt and Canada Post website information that the Landlords sent their evidence to the Tenant February 03, 2022. I accept based on the Canada Post website information that the Tenant has not picked up the package. Pursuant to section 90(a) of the *Residential Tenancy Act* (the "Act"), the Tenant is deemed to have received the Landlords' evidence February 08, 2022, only three days before the hearing. I found the Landlords failed to comply with rule 3.15 of the Rules.

The Landlords sent the Advocate a copy of their evidence during the hearing.

I heard the parties on whether the Landlords' evidence should be admitted or excluded pursuant to rule 3.17 of the Rules. The Advocate submitted that it should be excluded and that the hearing should be adjourned because the evidence was served late. The Landlords disagreed that an adjournment was required and submitted that the Tenant had a chance to pick up the registered mail. Pursuant to rule 3.17 of the Rules, I excluded the Landlords' evidence because I found it would be unfair to admit it when it was served so close to the hearing date and only sent to the advocate during the hearing.

I also considered rule 7.9 of the Rules in relation to adjournments and denied an adjournment because I found there was no basis to adjourn given the Landlords' evidence was excluded.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the admissible documentary evidence and oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the One Month Notice be cancelled?
2. Should the 10 Day Notice be cancelled?

Background and Evidence

The parties agreed on the following. There is a written tenancy agreement in this matter. The tenancy started February 01, 2021 and was for a fixed term of six months. The tenancy then became a month-to-month tenancy. Rent is \$1,250.00 per month due on the first day of each month. The Tenant paid a \$625.00 security deposit and \$625.00 pet damage deposit.

The Landlords sought to keep the security and pet damage deposits towards unpaid rent.

The 10 Day Notice was submitted. The 10 Day Notice states that the Tenant failed to pay \$1,250.00 in rent due November 01, 2021.

The parties agreed the 10 Day Notice was attached to the Tenant's door November 10, 2021.

The Tenant filed an amendment to the original application on November 16, 2021 to include a dispute of the 10 Day Notice.

The Landlords testified as follows. The Tenant failed to pay November rent. The next rent payment made was \$1,100.00 on November 17, 2021. The Tenant also paid \$1,250.00 on December 15, 2021. The Tenant did not make any further rent payments. The Tenant owed \$2,650.00 in rent as of the hearing date being \$150.00 for November 2021, \$1,250.00 for January 2022 and \$1,250.00 for February 2022.

The Tenant wrote as follows in the Application in relation to the dispute of the 10 Day Notice:

I RECEIVED THE 10 DAY NTE BECAUSE MY WALLET AND COAT WERE STOLEN FROM A CHANGEROOM RECENTLY SO I WAS UNABLE TO PAY THE RENT FOR NOV 1.

The Advocate agreed the Tenant failed to pay November rent and that this was outstanding when the 10 Day Notice was issued. The Advocate stated that the basis for the dispute was that the Tenant lost their wallet and so could not pay rent.

The Landlords sought an Order of Possession effective two days after service on the Tenant.

I heard the parties in relation to the One Month Notice; however, I do not find it necessary to outline their testimony here given the decision below.

Analysis

Section 26(1) of the *Act* states:

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.

Section 46 of the *Act* allows a landlord to end a tenancy when a tenant fails to pay rent. The relevant portions of section 46 state:

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2) A notice under this section must comply with section 52...

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution...

There are only six reasons a tenant can withhold rent:

1. When a landlord collects a security or pet damage deposit that is above the permitted amount (section 19(2) of the *Act*);
2. When section 33 of the *Act* in relation to emergency repairs applies;
3. When the landlord imposes a rent increase that is above the amount allowed by law (section 43(5) of the *Act*);
4. When the landlord issues the tenant a notice to end tenancy under section 49 of the *Act* for landlord's use of property (section 51 of the *Act*);
5. When an arbitrator allows the tenant to withhold rent (section 65(1)(f) of the *Act*); and
6. When the landlord consents to the tenant withholding rent.

I am satisfied based on the testimony of the parties that the Tenant is required to pay \$1,250.00 in rent per month by the first day of each month pursuant to the tenancy agreement.

I am satisfied based on the testimony of the parties and Tenant's written statement in the Application that the Tenant failed to pay November rent.

I find the Tenant had no authority under the *Act* to withhold rent for November because there is no evidence before me that the Tenant did. Both the Advocate and the Tenant in the Application state that the Tenant failed to pay rent because their wallet was stolen which is not a basis under the *Act* to not pay rent and is not a valid reason to dispute the 10 Day Notice. I find the Tenant was required to pay \$1,250.00 for November rent by November 01, 2021 pursuant to section 26(1) of the *Act* and that section 46(3) of the *Act* does not apply.

Given the Tenant did not pay November rent as required, the Landlord was entitled to serve the Tenant with the 10 Day Notice pursuant to section 46(1) of the *Act*.

I find the 10 Day Notice was attached to the Tenant's door November 10, 2021 based on the testimony of the parties. I find the Tenant was served with the 10 Day Notice in accordance with section 88(g) of the *Act*. Pursuant to section 90(c) of the *Act*, the Tenant is deemed to have received the 10 Day Notice November 13, 2021.

Upon a review of the Notice, I find it complies with section 52 of the *Act* in form and content as required by section 46(2) of the *Act*.

The Tenant had five days from receipt of the Notice to pay the outstanding rent in full or dispute the Notice pursuant to section 46(4) of the *Act*.

I accept the Landlords' testimony that the next rent payments received from the Tenant after the 10 Day Notice was issued was \$1,100.00 on November 17, 2021 and \$1,250.00 on December 15, 2021 because the Tenant did not attend the hearing to dispute this. I find the Tenant failed to pay the outstanding rent in full by November 18, 2021.

The Tenant disputed the Notice November 16, 2021, within time. However, the basis for the Tenant's dispute is that the Tenant lost their wallet and could not pay rent which is not a valid basis for disputing the 10 Day Notice. The Tenant's dispute of the 10 Day Notice is dismissed without leave to re-apply.

Section 55(1) and (1.1) of the *Act* states:

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 have found the Notice complies with section 52 of the *Act*. I have also dismissed the Tenant's dispute of the Notice. Therefore, pursuant to section 55(1) of the *Act*, I issue the Landlord an Order of Possession effective two days after service on the Tenant. Pursuant to section 68(2) of the *Act*, I order that the tenancy ended February 11, 2022, the date of the hearing.

I accept that \$2,650.00 in rent was outstanding at the time of the hearing based on the testimony of the Landlords because the Tenant did not appear at the hearing to dispute this. Pursuant to section 55(1.1) of the *Act*, the Landlord is entitled to the following:

- \$150.00 outstanding for November 2021
- \$1,250.00 for January 2022
- \$491.07 for February 01, 2022 to February 11, 2022 ($\$1,250.00 / 28 \text{ days} \times 11 \text{ days}$)
- **Total = \$1,891.07**

Pursuant to section 72(2) of the *Act*, the Landlord can keep the \$625.00 security deposit and \$625.00 pet damage deposit. The Landlord is issued a Monetary Order for the remaining \$641.07.

Given the tenancy is ending pursuant to the 10 Day Notice, I do not find it necessary to make a decision in relation to the One Month Notice.

Conclusion

The Landlord is issued an Order of Possession effective two days after service on the Tenant. This Order must be served on the Tenant and, if the Tenant does not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

The Landlord is issued a Monetary Order in the amount of \$641.07. This Order must be served on the Tenant and, if the Tenant does not comply with the Order, it may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: February 14, 2022

Residential Tenancy Branch