



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on September 25, 2021 (the “Application”). The Tenant applied to dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 21, 2021 (the “Notice”).

The Tenant appeared at the hearing. The Landlord appeared at the hearing with the Witness who was outside the room until required.

The Tenant stated that they moved out of the rental unit last month. The Landlord disagreed that the Tenant had moved out and sought an Order of Possession for the rental unit. In the circumstances, I proceeded with the hearing.

I explained the hearing process to the parties who did not have questions when asked. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”).

As I was affirming the Tenant, the Tenant exited the conference call without warning or explanation and did not call back into the hearing. Pursuant to rule 7.3 of the Rules, I proceeded with the hearing in the Tenant’s absence.

The Landlord provided affirmed testimony.

The Tenant submitted evidence prior to the hearing. The Landlord did not submit evidence prior to the hearing. The Landlord confirmed receipt of the hearing package and Tenant’s evidence.

I only had page one of the Notice before me in the Tenant's evidence. I ordered the Landlord to submit a copy of page two of the Notice within one hour of the end of the hearing, which the Landlord did.

The Landlord was given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence as well as the oral testimony of the Landlord and Witness. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. Is the Landlord entitled to an Order of Possession based on the Notice?

Background and Evidence

The Landlord testified as follows.

There is a written tenancy agreement between the parties. The tenancy started March 15, 2021 and is for a fixed term ending March 14, 2022. Rent is \$1,850.00 per month due on the 15th day of each month. The Tenant paid a \$925.00 security deposit and no pet damage deposit.

The Landlord is seeking to keep the security deposit towards unpaid rent.

The Notice states that the Tenant failed to pay \$4,050.00 due as follows:

- \$350.00 due July 15, 2021
- \$1,850.00 due August 15, 2021
- \$1,850.00 due September 15, 2021

The Tenant has not paid any rent since being issued the Notice. The Tenant did not have authority under the *Act* to withhold rent.

All three pages of the Notice were posted to the door of the rental unit on September 21, 2021.

The Tenant submitted three transaction detail screenshots which are false and do not include critical information found in legitimate transactions such as account numbers.

The Witness provided the following relevant testimony. The Tenant admitted to the Witness that they paid to have the three transaction detail screenshots made. The Tenant is still living in the rental unit.

The Landlord submitted that the Tenant's testimony that they moved out of the rental unit last month is false.

The Tenant submitted page one of the Notice and the Landlord submitted page two of the Notice.

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...

Section 55 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...and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I accept the undisputed testimony of the Landlord that rent is \$1,850.00 per month due on the 15th day of each month pursuant to the written tenancy agreement between the parties.

I accept the undisputed testimony of the Landlord that the Tenant owed \$4,050.00 in rent for July, August and September of 2021 when the Notice was issued. I accept the undisputed testimony of the Landlord that the three transaction detail screenshots submitted by the Tenant are not accurate because I agree they do not include information one would expect to see on these and because the Tenant did not remain in the hearing to provide testimony about rent payments or to comment on the three transaction detail screenshots submitted.

I accept the undisputed testimony of the Landlord that the Tenant did not have authority under the *Act* to withhold rent.

Given the Tenant did not have authority under the *Act* to withhold rent, section 46(3) of the *Act* does not apply and the Tenant was required to pay rent for July, August and September of 2021 pursuant to section 26(1) of the *Act*.

Given the Tenant had failed to pay \$4,050.00 in rent as of September 21, 2021, the Landlord was entitled to serve the Tenant with the Notice pursuant to section 46(1) of the *Act*.

I accept the undisputed testimony of the Landlord and find the Tenant was served with the Notice in accordance with section 88(g) of the *Act* on September 21, 2021.

Pursuant to section 90(c) of the *Act*, the Tenant is deemed to have received the Notice September 24, 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 or dispute the Notice pursuant to section 46(4) of the *Act*.

I accept the undisputed testimony of the Landlord and find that the Tenant has not paid rent since being issued the Notice.

The Tenant did dispute the Notice September 25, 2021; however, the Tenant did not remain in the hearing to provide affirmed testimony or explain their basis for the dispute. Further, I find there is no compelling evidence before me showing a valid basis for the dispute. Given this, I dismiss the Tenant's dispute of the Notice without leave to re-apply.

Given I have found the Notice complies with section 52 of the *Act* and have dismissed the Tenant's dispute of the Notice, pursuant to section 55(1) of the *Act*, I issue the Landlord an Order of Possession effective two days after service on the Tenant. I note that the tenancy is ending February 07, 2022 pursuant to section 68(2) of the *Act*.

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

- (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 accepted the undisputed testimony of the Landlord about unpaid rent and find the Tenant currently owes the Landlord:

- \$350.00 due July 15, 2021
- \$1,850.00 due August 15, 2021

- \$1,850.00 due September 15, 2021
- \$1,850.00 due October 15, 2021
- \$1,850.00 due November 15, 2021
- \$1,850.00 due December 15, 2021
- \$1,850.00 due January 15, 2022

- TOTAL = \$11,450.00

The Landlord can keep the \$925.00 security deposit pursuant to section 72(2) of the *Act*. The Landlord is issued a Monetary Order for \$10,525.00 pursuant to section 55(1.1) of the *Act*. I acknowledge that I have awarded the Landlord rent for the period January 15, 2022 to February 15, 2022 and issued the Landlord an Order of Possession effective two days after service on the Tenant. I find this appropriate given rent was due on January 15, 2022 for this period, I accept that the Tenant has not vacated the rental unit yet based on the testimony of the Landlord and Witness and there is only one week left in this rent period.

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 can keep the \$925.00 security deposit. The Landlord is issued a Monetary Order for \$10,525.00. 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 08, 2022

Residential Tenancy Branch