



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant: CNR, CNC, OLC, MNDCT, RP, RR, LRE, PSF
Landlord: OPR-DR, MNR-DR, FFL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear two crossed applications regarding a residential tenancy dispute.

The Tenant applied November 12, 2021 for:

- an order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, dated November 2, 2021 (the 10 Day Notice);
- an order to cancel a One Month Notice to End Tenancy for Cause;
- an order for the Landlord to comply with the Act, regulations, and/or tenancy agreement;
- compensation for monetary loss or other money owed;
- an order for repairs made to the unit, site, or property, having contacted the landlord in writing;
- an order to reduce rent for repairs, services, or facilities agreed upon but not provided;
- an order to suspend or set conditions on the Landlord's right to enter the rental unit or site;
- and an order for the Landlord to provide services or facilities required by the tenancy agreement or law.

The Landlord applied November 23, 2021 for:

- an order of possession, having issued the 10 Day Notice;
- a monetary order for rent not paid in the required time; and
- the filing fee.

The Tenant attended the hearing, as did the Landlord, who was represented by his legal counsel (CF). Those in attendance were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware

of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The Tenant testified she did not serve her Notice of Dispute Resolution Proceeding (NDRP) on the Landlord. I find the Landlord was not served in accordance with the Act. CF indicated he learned of the hearing only after making the Landlord's application to the Residential Tenancy Branch. As the Tenant failed to serve her NDRP on the Landlord, I dismiss her application without leave to reapply.

The remainder of the decision will consider the Landlord's application.

CF testified he served the Landlord's NDRP and evidence on the Tenant on November 26, 2021 by leaving them with an adult friend of the Tenant's who was "watching her place." CF submitted that the Tenant called later that day to confirm she had received the documents. In the hearing, the Tenant confirmed she received the documents as described. I find the Landlord's NDRP and evidence sufficiently served on the Tenant on November 26, 2021, in accordance with section 71 of the Act.

Issues to be Decided

- 1) Is the Landlord entitled to an order of possession?
- 2) Is the Landlord entitled to a monetary order for unpaid rent?
- 3) Is the Landlord entitled to the filing fee?

Background and Evidence

The parties agreed on the following particulars of the tenancy. It began November 26, 2020; rent is \$800.00, due on the first of the month; and the Tenant paid a security deposit of \$400.00, which the Landlord still holds.

The Tenant testified she paid an additional cleaning deposit of \$300.00, which the Landlord denied.

A copy of the 10 Day Notice was submitted as evidence. CF submitted that the 10 Day Notice was served on the Tenant by posting it to the door on November 9, 2021; the Tenant confirmed receiving it on November 10, 2021.

The 10 Day Notice is signed and dated by the Landlord, gives the address of the rental unit, states an effective date, states the reason for ending the tenancy, and is in the

approved form. The 10 Day Notice indicates the tenancy is ending because the Tenant failed to pay rent in the amount of \$800.00, due November 1, 2021.

CF submitted that the Tenant has not paid rent for July 2021 to February 2022, eight months.

The Landlord submitted as evidence a Direct Request Worksheet, indicating that rent in the amount of \$800.00 was due for July to November, 2021.

The Landlord submitted as evidence a record of rent payments made and missed during the tenancy, up to November 2021, which documents that rent was not paid July to November 2021.

The Tenant testified that she has not paid rent for July 2021 to February 2022.

Analysis

Section 26 of the Act provides that a tenant must pay the rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations, or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent.

Based on the evidence before me, and on a balance of probabilities, I make the following findings:

I find that the Landlord served the Tenant the 10 Day Notice by posting it to the door on November 9, 2021, and in accordance with section 88 of the Act. I find that the 10 Day Notice meets the form and content requirements of section 52.

I accept the Landlord's evidence, the undisputed submission of CF, and the Tenant's affirmed testimony that the Tenant did not pay rent of \$800.00 for July 2021 to February 2022.

I find that the tenancy is ending because the Tenant did not pay rent when due. I find that the Landlord is entitled to an order of possession.

Pursuant to section 55 (1.1) of the Act, I find the Tenant must pay the Landlord unpaid rent as follows:

Month	Monthly rent	Partial payment	Monthly outstanding
July 2021	\$800.00	\$0.00	\$800.00
August 2021	\$800.00	\$0.00	\$800.00
September 2021	\$800.00	\$0.00	\$800.00
October 2021	\$800.00	\$0.00	\$800.00
November 2021	\$800.00	\$0.00	\$800.00
December 2021	\$800.00	\$0.00	\$800.00
January 2022	\$800.00	\$0.00	\$800.00
February 2022	\$800.00	\$0.00	\$800.00
Total outstanding rent			\$6,400.00

In accordance with section 72 of the Act, I allow the Landlord to retain \$400.00 of the Tenant's security deposit in partial satisfaction of the amount owed to the Landlord by the Tenant.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord is successful in his application, I order the Tenant to pay the \$100.00 filing fee the Landlord paid to apply for dispute resolution.

I find the Landlord is entitled to a monetary order as follows:

Total outstanding rent	\$6,400.00
Security deposit	-\$400.00
Filing fee	\$100.00
Total	\$6,100.00

Conclusion

The Landlord's application is granted; the 10 Day Notice is upheld.

The Landlord is granted an order of possession which will be effective two days after it is served on the Tenant.

The Landlord is granted a monetary order in the amount of \$6,100.00.

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 09, 2022

Residential Tenancy Branch