



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT, CNR, OLC, MNDCT, LRE, AAT**

Introduction

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

- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67;
- an Order that the landlord's right to enter be suspended or restricted, pursuant to section 70;
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62;
- Order to Allow Access for the Tenant or their guests, pursuant to sections 30 and 70; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:15 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. The landlord and the landlord's property manager (the "property manager") attended the hearing and were 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, property manager and I were the only ones who had called into this teleconference.

The landlord and property manager were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The landlord and property manager testified that they are not recording this dispute resolution hearing.

The property manager confirmed the landlord's email address for service of this Decision and Order.

The property manager testified that the landlord was served with the tenant's application for dispute resolution via mail in November of 2018 but could not recall on what date. I find that the landlord was sufficiently served, for the purposes of this *Act*, pursuant to section 71 of the *Act*, with the tenant's application for dispute resolution because the property manager confirmed receipt.

Background and Evidence

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

The property manager provided the following undisputed testimony. This tenancy began on August 27, 2021 and is ongoing. Monthly rent in the amount of \$2,400.00 is payable on the first day of each month. The tenant paid a security deposit of \$1,200.00.

The landlord testified that the tenant did not pay November 2021's rent and a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") was posted on the tenant's door on November 15, 2021. The tenant filed to dispute the 10 Day Notice on November 18, 2021. The tenant's application for dispute resolution states that the tenant received the 10 Day Notice on November 15, 2021.

The 10 Day Notice was not entered into evidence. During the hearing I allowed the landlord to upload a copy of the 10 Day Notice into evidence. I find that the tenant is not prejudiced by this allowance as the tenant's application for dispute resolution affirms that the tenant has a copy.

The 10 Day Notice was entered into evidence during the hearing and states that the tenant failed to pay rent in the amount of \$2,400.00 that was due on November 1, 2021 and must move out of the subject rental property by November 28, 2021. The property manager testified that the tenant has not paid any rent since the 10 Day Notice was served and owes \$9,600.00 in rent from November 2021 to February 2022.

The tenant's application for dispute resolution states:

Hi, I am having an issue with my roommate being laid off and not being able to pay rent therefore I will need some time in order to either find a new roommate or a new place and move out.

Analysis

Rule 7 of the Residential Tenancy Branch Rules of Procedure provides in part as follows:

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

The tenant failed to attend this hearing. Pursuant to Rule 7 of the Residential Tenancy Branch Rules of Procedure, I dismiss the tenant's application without leave to reapply.

Section 46(1) of the *Act* states that 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.

Section 46(4) of the *Act* states that 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.

Based on the property manager's undisputed testimony and the statements made on the tenant's application for dispute resolution, I find that the 10 Day Notice was posted on the tenant's door on November 15, 2021, and it was received by the tenant on November 15, 2021. I accept the property manager's undisputed testimony that the tenant has not paid rent for November 2021 to the present date, February 1, 2022. As

the tenant did not pay the overdue rent within five days of receiving the 10 Day Notice, I uphold the 10 Day Notice.

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

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.

Upon review of the 10 Day Notice, I find that it meets the form and content requirements of section 52 of the *Act*.

Since I have dismissed the tenant's application, upheld the 10 Day Notice and found that the 10 Day Notice meets the form and content requirements of section 52 of the *Act*, the landlord is entitled to a two-day Order of Possession pursuant to section 55(1) of the *Act*.

Since I have dismissed the tenant's application, upheld the 10 Day Notice and found that the 10 Day Notice meets the form and content requirements of section 52 of the *Act*, the landlord is entitled to a Monetary Order for unpaid rent pursuant to section 55(1.1) of the *Act*.

Residential Tenancy Guideline #3 states:

Compensation for overholding under section 57 of the RTA (section 50 of the MHPTA) is not considered rent since overholding only occurs after a tenancy has ended....

If a tenant has not vacated or abandoned the unit, or the conclusive presumption does not apply, (in other words the right of possession of the rental unit or manufactured home site is in issue at the dispute resolution hearing), the director will usually rely on section 68(2) of the RTA (section 61(2) of the MHPTA) to order that the date the tenancy ends is the date of the dispute resolution hearing, rather than the effective date shown on the notice to end tenancy. If the director is satisfied upon reviewing submitted materials and hearing evidence as to an amount of unpaid rent owing, including rent owing since the time the notice to end tenancy was issued, the director must grant an order to the landlord for the amount of unpaid rent found to be owing.

Pursuant to Residential Tenancy Policy Guideline #3, I order that the tenancy ends today, February 1, 2022 and that the landlord is entitled to lost rent from November 2021 to February 1, 2022. If the landlord suffers further loss due to the tenant overholding, the landlord is at liberty to file an application for dispute resolution seeking damages for overholding. I find that the landlord is entitled to rent from November 2021 to January 2022 in the amount of \$7,200.00 and per diem rent for February 1, 2022 pursuant to the following calculation:

$$\begin{aligned} \$2,400.00 \text{ (rent)} / 28 \text{ (days in February 2022)} &= \$85.71 * 1 \text{ (days tenancy ongoing} \\ &\text{in February 2022)} = \$85.71 \end{aligned}$$

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit due to the tenant. I find that the landlord is entitled to retain the tenant's entire security deposit in the amount of \$1,200.00 in part satisfaction of the landlord's monetary claim.

Conclusion

The tenant's application is dismissed without leave to reapply.

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
Unpaid rent	\$7,285.71
Less security deposit	-\$1,200.00
TOTAL	\$ 6,085.71

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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 *Residential Tenancy Act*.

Dated: February 01, 2022

Residential Tenancy Branch