



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNL-MT (Tenant)
 OPR-DR (Landlord)

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties.

The Tenant filed their application January 19, 2022 (the “Tenant’s Application”). The Tenant applied as follows:

- To dispute a 10 Day Notice to End Tenancy Issued for Unpaid Rent or Utilities dated January 14, 2022 (the “10 Day Notice”)
- To dispute a Two Month Notice to End Tenancy for Landlord's Use of Property dated November 11, 2021 (the “Two Month Notice”), and for more time to dispute this notice

The Landlord filed their application January 31, 2022 (the “Landlord’s Application”). The Landlord applied as follows:

- For an Order of Possession based on the 10 Day Notice

The Landlord appeared at the hearing. The Tenant did not appear at the hearing which lasted 16 minutes. I explained the hearing process to the Landlord. I told the Landlord they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Landlord provided affirmed testimony.

Service

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

The Landlord confirmed receipt of the hearing package for the Tenant's Application. The Landlord testified that they only received one piece of evidence from the Tenant which was a Stop Work Order received the date of the hearing.

I accept the undisputed testimony of the Landlord that they only received one piece of evidence from the Tenant on the date of the hearing. Given this, I find the Tenant failed to comply with rule 3.14 of the Rules in relation to serving their evidence on the Landlord. Given this, I exclude the Tenant's evidence, other than the 10 Day Notice and Two Month Notice, because I find it would be unfair to consider it when the Landlord has not seen it and cannot address it. I admit the 10 Day Notice and Two Month Notice because these are documents the Landlord issued and therefore the Landlord is aware of them.

The Landlord testified that the hearing package and evidence for the Landlord's Application was posted to the door of the rental unit February 03, 2022. The Landlord submitted a photo and letter from M.M. confirming service.

Based on the undisputed testimony of the Landlord, photo and letter from M.M., I find the Tenant was served with the hearing package and evidence for the Landlord's Application in accordance with sections 88(g) and 89(2)(d) of the *Residential Tenancy Act* (the "Act"). Pursuant to section 90(c) of the *Act*, the Tenant is deemed to have received the package February 06, 2022. I find the Landlord complied with rule 3.1 of the Rules in relation to the timing of service.

Given I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Landlord was given an opportunity to present relevant evidence and make relevant submissions. I have considered the admissible documentary evidence and all oral testimony of the Landlord. I will only refer to the evidence I find relevant in this decision.

Tenant's Application

Rule 7.3 of the Rules states:

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.

Given the Tenant did not appear at the hearing, the Tenant's Application is dismissed without leave to re-apply. Given this, I have considered whether the Landlord is entitled to an Order of Possession pursuant to section 55(1) of the *Act* based on the 10 Day Notice or Two Month Notice. I have also considered whether the Landlord is entitled to a Monetary Order for unpaid rent pursuant to section 55(1.1) of the *Act* because the Landlord sought a Monetary Order at the hearing.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession based on the 10 Day Notice?
2. Is the Landlord entitled to an Order of Possession based on the Two Month Notice?
3. Is the Landlord entitled to a Monetary Order for unpaid rent pursuant to section 55(1.1) of the *Act*?

Background and Evidence

A written tenancy agreement was submitted as evidence. The agreement is between the previous owner of the rental unit and the Tenant. The tenancy started December 15, 2008, and is a month-to-month tenancy. Rent is due on the first day of each month.

The Landlord testified as follows.

The Landlord purchased the rental unit in 2013 and became the Tenant's landlord.

Rent is currently \$985.00 per month and has been since December of 2017.

The Tenant was issued the Two Month Notice and was entitled to one month of free rent. The Tenant used December of 2021 as their month of free rent. The Tenant has not moved out of the rental unit and now owes rent for January, February and March of 2022.

The Two Month Notice was served on the Tenant in person November 11, 2021. The Two Month Notice had an effective date of January 31, 2022.

The 10 Day Notice was served on the Tenant in person January 14, 2022. The 10 Day Notice states that \$585.00 in rent was outstanding as of January 01, 2022 because the Tenant's partner did some work for the Landlord and the Landlord credited the Tenant \$400.00 for January of 2022 rent for the work. The Tenant failed to pay the remaining \$585.00 in rent owing for January of 2022 and did not have authority under the *Act* to withhold this because the Tenant had already received the equivalent of one month's rent in December for the Two Month Notice. The Tenant has not paid any rent since being issued the 10 Day Notice.

The Landlord sought an Order of Possession effective two days after service on the Tenant based on the 10 Day Notice. The Landlord also asked for a Monetary Order for outstanding rent from January to March of 2022.

The Landlord submitted the following documentary evidence:

- The 10 Day Notice with an effective date of January 24, 2022
- Proof of Service of the 10 Day Notice
- Direct Request Worksheet
- Notice of Rent Increase
- Tenancy Agreement

Analysis

I have considered the 10 Day Notice first because the effective date of the 10 Day Notice is prior to the effective date of the Two Month Notice.

Section 26(1) of the *Act* requires a tenant to pay rent in accordance with the tenancy agreement unless they have a right to withhold rent under the *Act*.

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...

I accept the undisputed testimony of the Landlord and based on it, as well as the documentary evidence submitted, I find the following.

I find the Tenant owes \$985.00 per month in rent which is due by the first day of each month pursuant to the tenancy agreement between the parties.

I find the Tenant did not have authority under the *Act* to withhold rent for January of 2022 because the Tenant had used December of 2021 as their free month of rent pursuant to the Two Month Notice. Given the Tenant did not have authority under the *Act* to withhold rent, the Tenant was required to pay \$985.00 by January 01, 2022, for January rent pursuant to section 26(1) of the *Act*. I find section 46(3) of the *Act* does not apply.

I find the Tenant failed to pay \$585.00 of January rent by January 01, 2022. Given the Tenant failed to pay 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 Tenant was served with the Notice in accordance with section 88(a) of the *Act* and that the Tenant received the Notice January 14, 2022.

I have reviewed the 10 Day Notice submitted by the Tenant and the 10 Day Notice submitted by the Landlord and I find the 10 Day Notice 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 10 Day Notice on January 14, 2022, to pay the outstanding rent or dispute the 10 Day Notice pursuant to section 46(4) of the *Act*.

I find the Tenant has not paid any rent since being issued the 10 Day Notice.

The Tenant disputed the 10 Day Notice January 19, 2022. However, the Tenant failed to appear at the hearing to provide a basis for the dispute and the Tenant's Application has been dismissed without leave to re-apply. Further, the Tenant's Application is not compelling evidence of a basis to dispute the 10 Day Notice. As well, the Tenant's evidence has been excluded.

Given the above, I uphold the 10 Day Notice.

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 [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.

The Landlord is entitled to an Order of Possession pursuant to section 55(1) of the *Act* and is issued an Order of Possession effective two days after service on the Tenant.

I do not find it necessary to consider the Two Month Notice further because the tenancy is ended pursuant to the 10 Day Notice. Pursuant to section 68(2) of the *Act*, I order the tenancy ended April 01, 2022, the date of the hearing.

I find the Tenant owes the Landlord \$2,555.00 in unpaid rent as follows:

- January 2022 \$585.00
- February 2022 \$985.00
- March 2022 \$985.00

The Landlord is entitled to a Monetary Order for \$2,555.00 pursuant to section 55(1.1) of the *Act*.

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 entitled to a Monetary Order in the amount of \$2,555.00. 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: April 01, 2022

Residential Tenancy Branch