



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR-MT

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a tenancy. On January 27, 2022 the Tenant applied for an order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, dated January 11, 2022 (the 10 Day Notice), noting that she needed more time to dispute the Notice.

The parties 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 that her Notice of Dispute Resolution Proceeding (NDRP) and evidence was served on the Landlord by registered mail on January 29, 2022; the Landlord confirmed he received it. I find the Tenant served the Landlord in accordance with section 89 of the Act.

The Landlord submitted responsive evidence to the Residential Tenancy Branch (RTB), but testified that he did not serve his evidence on the Tenant. I find the Landlord did not serve the Tenant in accordance with section 88 of the Act; therefore, I informed the parties I would not be considering the Landlord's evidence in my decision.

Preliminary Matter

As in the hearing the Landlord informed me his first and last name were spelled incorrectly in the application, I have used the correct spelling of the Landlord's name on the cover page of this decision and in the orders. The Tenant did not raise an objection in the hearing as to the spelling of the Landlord's name, and the corrected spelling

matches that on the 10 Day Notice. This amendment is in accordance with section 64(3)(c) of the Act.

Issues to be Decided

1. Is the Tenant entitled to more time to dispute the 10 Day Notice?
2. If so, is the Tenant entitled to an order cancelling the 10 Day Notice?
3. If not, is the Landlord entitled to an order of possession and/or a monetary order for unpaid rent?

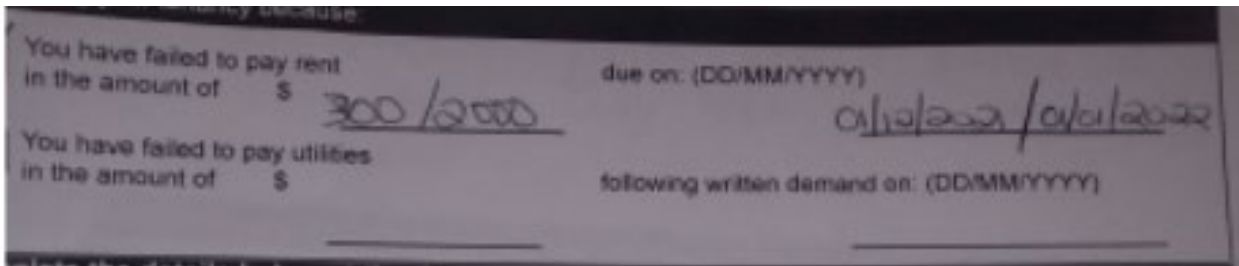
Background and Evidence

The parties agreed on the following particulars regarding the tenancy. It is an oral agreement, and began December 20, 2020; rent is \$2,000.00, due on the first of the month; and the Tenant paid a security deposit of \$2,000.00, which the Landlord still holds. The parties agreed that the Tenant still occupies the rental unit.

The Landlord testified he served the 10 Day Notice on the Tenant by posting it to door and putting it in the mail slot or box on January 11, 2022. The Tenant confirmed she received the Notice on January 11, 2022.

When I asked the Tenant what the exceptional circumstances were that necessitated she have more time to apply to dispute the 10 Day Notice, the Tenant submitted she had applied to dispute the Notice on January 10, 2022. However, moments earlier in the hearing, both parties had agreed that the 10 Day Notice was served on the Tenant on January 11, 2022. The NDRP indicates that the Tenant applied for dispute resolution on January 27, 2022. The Tenant testified she required more time to dispute the 10 Day Notice because she had submitted an unknown number of dispute applications to the RTB regarding monetary claims against the Landlord, had become confused as to which ones “went through,” and did not know her legal rights.

A copy of the 10 Day Notice is submitted as evidence. It is signed and dated by the Landlord, gives the address of the rental unit, states an effective date, states the grounds for ending the tenancy, and is in the approved form. On page 2 of the Notice, the reason indicated for ending the tenancy is filled out as pictured:



In the hearing, the Landlord confirmed that this indicated that the Tenant was short \$300.00 on her rent due December 1, 2021, and did not pay any of the rent due on January 1, 2022. The Tenant did not indicate she had been confused by the way the Landlord filled out the Notice.

The Landlord testified that the Tenant had made rent payments as follows:

Month	Rent owing	Rent paid	Monthly amount outstanding
December 2021	\$2,000.00	\$1,700.00	\$300.00
January 2022	\$2,000.00	\$0.00	\$2,000.00
February 2022	\$2,000.00	\$0.00	\$2,000.00
March 2022	\$2,000.00	\$0.00	\$2,000.00
April 2022	\$2,000.00	\$0.00	\$2,000.00

The Tenant testified that it was November, not December 2021, that she paid only \$1,700.00 of the rent, and that she had paid the December 2021 rent in full.

The Tenant testified that she withheld the \$300.00 as she understood she and the Landlord made a verbal and text agreement in late October that the Tenant would get an estimate for roof repair, then take the cost of the estimate out of her rent.

During her testimony, the Tenant also spoke about matters unrelated to the payment of rent, such as mould issues in the unit, and compensation she was seeking from the Landlord.

The Tenant testified that after she brought up the mould issue, the Landlord would not accept her rent. The Tenant testified this discussion was over text, that she had submitted a copy of the text as evidence, and that the discussion occurred on an unknown date, before the Landlord served her with the 10 Day Notice on January 11,

2022. No such text message is among the evidence submitted to the RTB by the Tenant.

The Tenant later testified that she did not pay rent from January on, as the Landlord refused her rent payments, and because she had paid to address mould issues. The Tenant testified she did not provide receipts to the Landlord, and the Tenant's submitted evidence included no receipts.

In his rebuttal, the Landlord agreed that it was November 2021, not December 2021, that the Tenant paid only \$1,700.00 in rent. The Landlord testified that the Tenant has not paid any further rent, and that "every month it was like pulling teeth to get the rent."

The parties agree that the Tenant did not pay rent for January, February, March, and April 2022.

Analysis

Based on the parties' testimony, I find the Landlord served the Tenant the 10 Day Notice on January 11, 2022, in accordance with section 88 of the Act, and the Tenant received it on the same day.

I find the 10 Day Notice meets the form and content requirements of section 52, as it is signed and dated by the Landlord, gives the address of the rental unit, states an effective date, states the grounds for ending the tenancy, and is in the approved form.

In her testimony, the Tenant stated that she required more time to dispute the notice as she was confused about her multiple dispute applications and did not know her legal rights. My decision on whether the Tenant is entitled to more time to dispute the 10 Day Notice must be governed by the Act, which at section 66 states:

Director's orders: changing time limits

66 (1) The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59 (3) *[starting proceedings]* or 81 (4) *[decision on application for review]*.

The Residential Tenancy Branch [Policy Guideline 36, Extending a Time Period](#), provides guidance on the Act's intention regarding "exceptional circumstances"; it states: "The word 'exceptional' implies that the reason for failing to do something at the time required is very strong and compelling." As an example of what might be

considered an exceptional circumstance, the guideline cites a situation in which the party was in the hospital at all material times, stating:

The evidence which could be presented to show the party could not meet the time limit due to being in the hospital could be a letter, on hospital letterhead, stating the dates during which the party was hospitalized and indicating that the party's condition prevented their contacting another person to act on their behalf.

Considering the Act and the Policy Guideline, I must determine that the reasons provided by the Tenant are not sufficient to meet the high bar required, and I therefore cannot grant the Tenant more time to apply to dispute the 10 Day Notice.

As the 10 Day Notice was received by the Tenant on January 11, 2022, the application deadline was 5 days later: January 16, 2022. However, the Tenant applied to cancel the 10 Day Notice on January 27, 2022. Therefore, in accordance with section 46(5) of the Act, the Tenant is conclusively presumed to have accepted that the tenancy ended on January 24, 2022, the corrected effective date of the notice, and must vacate the rental unit.

Therefore, I find the Landlord is entitled to an order of possession.

As the Tenant still occupies the rental unit, I order that in accordance with section 68(2)(a) of the Act, the tenancy ended on the date of the hearing, April 14, 2022.

Regarding outstanding rent, I am not considering rent for November 2021, as it is not referred to on the 10 Day Notice, and therefore the Tenant could not reasonably have expected it to come up in the hearing.

I will consider whether rent is due for the months referred to on the 10 Day Notice, December 2021 and January 2022, and, in accordance with section 64(3)(c) of the Act, amend the amount on the 10 Day Notice to include rent for February–April 2022, as the Tenant could reasonably have expected it to come up in the hearing.

The Tenant testified that she did not pay rent for January–April 2022 because the Landlord refused her rent payments, and because she paid for unspecified expenses related to mould.

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.

Section 33(1) of the Act provides that “emergency repairs” mean repairs that are:

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system,
 - (iv) damaged or defective locks that give access to a rental unit,
 - (v) the electrical systems, or
 - (vi) in prescribed circumstances, a rental unit or residential property.

Section 33 (5) of the Act states:

- (5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant
 - (a) claims reimbursement for those amounts from the landlord, and
 - (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

Section 33(7) of the Act states: If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

The Tenant testified that she did not provide the Landlord with receipts related to the treatment of mould in the rental unit.

I find the Tenant was not entitled to withhold rent for emergency repairs, based on the Tenant’s undisputed affirmed testimony that she did not provide receipts to the Landlord, and on the fact that while mould can be a very serious issue, it cannot be considered an emergency as defined by section 33(1) of the Act.

The Landlord has testified that he is seeking to recover the unpaid rent from the Tenant, and that during the tenancy it was regularly a challenge to obtain the rent from the Tenant.

As the Tenant has provided no proof that the Landlord refused her rent payments, and I find the Landlord's version of events more likely, on a balance of probabilities, that the Tenant stopped paying rent, I do not believe the Tenant's testimony that the Landlord refused her rent payments.

As the Landlord's own testimony provided conflicting information about whether or not the Tenant paid rent in December 2021, and the Landlord concurred that the Tenant's testimony regarding the payment of November 2021 rent was correct, on this point I find the Tenant's version of events more credible: that she paid the December 2021 rent in full.

The parties agree that the Tenant did not pay rent for January, February, March, or April 2022.

In accordance with section 72 of the Act, I allow the Landlord to retain \$1000.00 of the Tenant's security deposit in partial satisfaction.

I find the Landlord is entitled to a monetary order for \$7,000.00 as follows:

Month	Rent owing	Rent paid	Monthly outstanding
January 2022	\$2,000.00	\$0.00	\$2,000.00
February 2022	\$2,000.00	\$0.00	\$2,000.00
March 2022	\$2,000.00	\$0.00	\$2,000.00
April 2022	\$2,000.00	\$0.00	\$2,000.00
Security deposit			-\$1,000.00
Total owing			\$7,000.00

In closing, I bring the attention of the parties to section 13(1) of the Act, which states that a landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.

Conclusion

The Tenant's application is dismissed.

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 \$7,000.00.

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: April 19, 2022

Residential Tenancy Branch