



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute. On January 25, 2022 the Tenant applied for:

- an order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, dated January 20, 2022 (the 10 Day Notice); and
- the filing fee.

The hearing started promptly at 1:30 p.m. The Landlord attended with her property manager (RL); the Tenant did not attend the hearing. Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were also made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

Rule 7.3 permits an arbitrator to conduct a hearing in the absence of any party, or dismiss the application with or without leave to re-apply.

RL testified that the Landlord received the Notice of Dispute Resolution Proceeding (NDRP) from the Tenant on an unknown date. I find the Tenant sufficiently served the NDRP on the Landlord in accordance with section 71 of the Act.

RL testified that he served the Landlord's responsive evidence on the Tenant in three separate emails, on February 24, April 11, and April 16, 2022. RL testified that he and the Tenant had previously used email to communicate during the tenancy. Based on the affirmed undisputed testimony of RL, I find the Landlord's evidence served on the Tenant in accordance with section 88 of the Act, and deem it received by the Tenant on

February 27, April 14, and April 19, 2022, respectively, in accordance with section 44 of the Residential Tenancy Regulation.

RL testified that as he is not sure if the Tenant still resides in the rental unit, the Landlord is seeking an order of possession, as well as unpaid rent.

Preliminary Matters

As the Landlord informed me her first name was spelled incorrectly in the application, I have used the correct spelling on the cover page of this decision and in the orders. The corrected spelling is consistent with the signed tenancy agreement and the 10 Day Notice. This amendment is in accordance with section 64(3)(c) of the Act.

As the Tenant did not attend the hearing, I dismiss his application.

Issues to be Decided

1. Is the Landlord entitled to an order of possession?
2. Is the Landlord entitled to a monetary order for non-payment of rent?

Background and Evidence

RL confirmed the following particulars regarding the tenancy. It began on August 19, 2021; rent is \$2,250.00, due on the first of the month; and the Tenant paid a security deposit of \$1,125.00, which the Landlord still holds.

RL testified that he served the 10 Day Notice on the Tenant in person on January 21, 2022, and submitted as evidence a proof of service form, signed by the Tenant. In his application, the Tenant submitted that he received the 10 Day Notice in person on January 21, 2022.

The 10 Day Notice is signed and dated by the Landlord's agent, gives the address of the rental unit, states the 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 has failed to pay rent in the amount of \$2,250.00, due on January 1, 2022.

RL testified that the Tenant now owes additional outstanding rent as follows:

Month	Rent due	Rent paid	Outstanding monthly amount
January 2022	\$2,250.00	\$0.00	\$2,250.00
February 2022	\$2,250.00	\$0.00	\$2,250.00
March 2022	\$2,250.00	\$0.00	\$2,250.00
April 2022	\$2,250.00	\$0.00	\$2,250.00
Total			\$9,000.00

The Landlord submitted as evidence an undated text exchange between the Tenant and RL in which the Tenant states he is not able to pay rent. The Landlord also submitted as evidence a second undated text to the Tenant, stating that the Tenant owes four months' rent.

Analysis

Pursuant to section 46 (1) of the Act, 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.

I accept RL's undisputed affirmed testimony and the documentary evidence that the Tenant owes outstanding rent for four months, totalling \$9,000.00. Based on the testimony of RL, the proof of service form signed by the Tenant, and the Tenant's application, I find RL served the 10 Day Notice on the Tenant on January 21, 2022, in accordance with section 88 of the Act.

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

Section 55 (1) of the Act states that when a tenant's application to cancel a notice to end tenancy is dismissed and the notice to end tenancy complies with the form and content requirements of section 52 of the Act, the director must grant an order of possession to the landlord.

As I have dismissed the Tenant's application, and find that the 10 Day Notice meets the form and content requirements of section 52, the Landlord is entitled to an order of possession.

Section 55(1.1) of the Act states that 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.

Therefore, pursuant to section 55 (1.1) of the Act, I find the Tenant must pay the Landlord unpaid rent in the amount of \$9,000.00.

In accordance with section 72 of the Act, I allow the Landlord to retain \$1,125.00 of the Tenant's security deposit in partial satisfaction of the outstanding rent owed.

I find the Landlord is entitled to a monetary order in the amount of \$7,875.00.
(\$9,000.00 - \$1,125.00 = \$7,875.00)

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 \$7,875.00.

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 25, 2022

Residential Tenancy Branch