



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR, OLC, FFT**

Introduction

This hearing was convened as a result of the Tenant's application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act") for:

- cancellation of a Ten Day Notice to End Tenancy for Unpaid Rent and/or Utilities dated February 14, 2022 ("10 Day Notice") pursuant to section 46;
- an order for the Landlord to comply with the Act, *Residential Tenancy Regulations* and/or the tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee of the Application from the Landlord pursuant to section 72.

The Tenant did not attend this hearing. I left the teleconference hearing connection open until 9:47 am in order to enable the Tenant to call into this teleconference hearing scheduled for 9:30 am. The Landlord and the Landlord's ("RR") 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 the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding ("NDRP"). I also confirmed from the teleconference system that the Landlord, RR and I were the only ones who had called into this teleconference.

RR stated the Tenant never served the Landlord with the NDRP or any evidence. RR stated he received a message from the Residential Tenancy Branch ("RTB") advising this hearing was scheduled for today. RR stated he called the RTB and was provided with a copy of the NDRP. I find the Tenant did not serve the Landlord with the NDRP as required by section 89 of the Act.

Preliminary Matter – Effect of Non-Attendance by Tenant

Rule 6.6 of the *Residential Tenancy Branch Rules of Procedure* (“RoP”) states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

As such, even though the Tenant filed the Application, the Landlord bears the burden of proof it is more likely than not that the 10 Day Notice is valid. The Landlord must meet this burden even if the Tenants do not attend the hearing.

However, the Tenant bear the onus to prove they are entitled to a rent reduction. As the Tenant has not attended the hearing, they cannot discharge this onus. As such, I dismiss the Application, without leave to reapply.

Rules 7.1, 7.3 and 7.4 of the RoP state:

7.1 Commencement of the dispute resolution hearing

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

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 the party, or dismiss the application, with or without leave to re-apply.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

As the Tenant was not present at the hearing, I will only consider the copy of the 10 Day Notice submitted by the Tenant in advance of the hearing when adjudicating whether the Landlord is entitled to an Order of Possession and Monetary Order pursuant to section 55 of the Act.

Issues to be Decided

Is the Landlord entitled to:

- an Order of Possession?
- a Monetary Order for the unpaid rent?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Landlord's claims for an Order of Possession and Monetary Order are set out below.

RR affirmed the tenancy commenced on July 1, 2021, for a fixed term ending June 30, 2022, with rent of \$1,750.00 payable on the 1st day of each month. RR stated the tenant paid a security deposit of \$875.00 which the Landlord is currently holding on behalf of the Tenant.

The Landlord stated the 10 Day Notice was served through the Tenant's mail slot on February 14, 2022 in the presence of a witness. I find the Tenant was served with the 10 Day Notice in accordance with the provisions of section 88 of the Act.

The Landlord stated the Tenant had rental arrears of \$995.00 as of February 1, 2022.

Analysis

Sections 46(1) through 46(5) of the Act 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 [*form and content of notice to end tenancy*].
- (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.
- (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant
- (a) *is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and*
 - (b) *must vacate the rental unit to which the notice relates*

[emphasis in italics added]

The undisputed testimony of the Landlord was the 10 Day Notice was served through the Tenant's mail slot on February 14, 2022. Pursuant to section 90 of the Act, the Tenant was deemed to have received the 10 Day Notice on February 17, 2022. Pursuant to section 46(4) of the Act, the Tenant had 5 days, or February 22, 2022, within which to make an application for dispute resolution to dispute the 10 Day Notice. The records of the RTB Branch disclose the Application was made on February 16, 2022. Accordingly, the Tenant file the Application within the five-day dispute period.

I accept the Landlord's undisputed testimony in its entirety. I find, as of February 1, 2022, the Tenant had rental arrears of \$995.00. Section 26(1) of the Act states:

- 26 (1)** A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

As such, the Tenant was responsible for paying rent when it was due. Based on the foregoing, I find the 10 Day Notice was issued for a valid reason.

Sections 55(1) and 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.

I have reviewed the 10 Day Notice and find the Notice was made on an obsolete form of RTB-30 and it did not contain the content that appears in the current form of RTB-30. As such, I find the Landlord is not entitled to an Order of Possession pursuant to section 55(1) of the Act or a Monetary Order for unpaid rent pursuant to section 55(1.1) of the Act. The Tenancy continues until ended in accordance with the provisions of the Act.

Conclusion

The Application is dismissed in its entirety.

As the 10 Day Notice did not comply with the form and content requirements of section 52 of the Act, the Landlord is not entitled to an Order of Possession pursuant to section 55(1) of the Act or a Monetary Order for unpaid rent pursuant

to section 55(1.1) of the Act.

The Tenancy continues until ended in accordance with the provisions of the Act.

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: May 30, 2022

Residential Tenancy Branch