



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, LRE

Introduction

In this application for dispute resolution, the Tenants applied on February 2, 2022 for:

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated February 2, 2022 (the 10 Day Notice);
- an order for the Landlord to comply with the Act, regulation, and/or tenancy agreement; and
- an order to suspend or set conditions on the Landlord's right to enter the rental unit.

The hearing was attended by the Tenants and the Landlord. 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.

The Tenants testified they served the Notice of Dispute Resolution Proceeding and their evidence on the Landlord by email on February 11, 2022. The Landlord confirmed that she and the Tenants had a history of communicating by email. The Landlord confirmed she received the Tenants' documents by email on February 13, 2022, but stated she could not open most of them, and "could hardly read what they sent" so was not sure what evidence the Tenants served. I asked the Landlord if she let the Tenants know she could not read all of their evidence; she said she did not.

Regarding service of documents by email, [Residential Tenancy Policy Guideline 12](#) provides the following guidance:

At any time, a tenant or landlord may provide an email address for service purposes. By providing an email address, the person agrees that important documents pertaining to their tenancy may be served on them by email. ... A tenant or landlord must provide to the other party, in writing, the email address to be used. There is no prescribed form for doing so, but parties may want to use RTB-51 - "Address for Service" form and provide it to the other party. If there has been a history of communication between parties by email, but a party has not specifically provided an email address for service purposes, it is not advisable to use email as a service method.

Despite Policy Guideline 12, as the parties had a history of communicating by email, I find it reasonable that the Tenants served the NDRP and their evidence on the Landlord by email. I find it unreasonable that, having received the Tenants' evidence, the Landlord did not advise the Tenants she could not open most of it.

I find the Tenants served their NDRP and evidence on the Landlord in accordance with section 89 of the Act, and therefore will consider their evidence in my decision.

The Landlord testified she asked Tenant KB to sign the RTB Address for Service form so she could serve her evidence on the Tenants by email, but he did not. The Landlord testified that she therefore did not serve her evidence on the Tenants. The Landlord testified that when she met with the father of one of the Tenants to return their belongings, her request for a forwarding address was declined. The Landlord testified she tried to call the Tenants, but they did not reply.

The Landlord could have served her evidence on the Tenants by email, but chose not to, as Tenant KB did not sign the Address for Service form. Having received the NDRP from the Tenants on February 13, 2022, the Landlord could have applied for an order for substituted service, as described in Policy Guideline 12, but did not. As the Landlord did not serve her evidence on the Tenants, I will not be considering it in my decision.

Preliminary Matter

At the beginning of the hearing, the Tenants testified they vacated the rental unit on February 16, 2022. As the Tenants' claims were regarding an existing tenancy, I dismiss their application in its entirety.

Section 55 of the Act includes:

- 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.

As the Tenants' application is dismissed, and the Landlord has confirmed she has possession of the rental unit, and is not seeking an order of possession, the remainder of this decision with consider whether the Landlord is entitled to an order requiring the payment of unpaid rent.

Issue to be Decided

Is the Landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The parties agreed on the following particulars of the tenancy. It began December 20, 2021; rent was \$3,100.00, due on the first of the month; and the Tenants paid a security deposit of \$1,550.00, which the Landlord still holds.

A copy of the 10 Day Notice is submitted as evidence. The Landlord testified that the Notice was served on the Tenants by taping it to the door on February 2, 2022, which the Tenants confirmed.

The 10 Day Notice is signed and dated by the Landlord, gives the address of the rental unit, states an 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 Tenants failed to pay rent in the amount of \$3,500.00, due on February 1, 2022.

The Landlord testified the Tenants owe unpaid rent as follows:

Month	Rent	Rent paid	Monthly amount owing
January 2022	\$3,100.00	\$2,700.00	\$400.00
February 2022	\$3,100.00	\$0.00	\$3,100.00
Total			\$3,500.00

The Landlord testified she received payments on behalf of the Tenants from a community centre, not from the Tenants directly. The Landlord testified that she received a first payment of \$2,800.00, but after she allocated \$1,550.00 for the damage deposit, she realized the Tenants were short on the rent for January 2022.

The Landlord testified that on January 19, 2022 she received a cheque from the community centre for \$1,450.00, and was not paid rent for February 2022.

The Tenants testified that they did not know their rent was short for January 2022, and that the Landlord did not notify the Tenants.

The Tenants testified that in February 2022 they sent an e-transfer for \$3,000.00 to the Landlord, as they thought that was the amount owing after a \$100.00 rent supplement. The Tenants testified they submitted a copy of the e-transfer as evidence, and that they used the Landlord's email address they obtained from the rent bank.

I asked the Tenants to state the email address they used. The Landlord testified that was not her email address, and that she did not receive the email transfer in February 2022 for \$3,000.00.

The Tenants testified that the Landlord did not notify them she did not receive the rent for February 2022, and that the e-transfer did not "bounce back."

A screenshot is submitted as evidence by the Tenants, as proof rent was paid. The image includes the following: "Review and confirm," "Send money," "\$3,000.00," the

email address read by the Tenants, and a button at the bottom of the image, which says "SEND MONEY."

The Landlord testified that this screenshot was a piece of the Tenants' evidence she could read, and that it was just a "review and confirm," not a sent receipt, and noted that it was undated.

The Landlord testified that she contacted the two community organizations that had provided money on behalf of the Tenants.

The Landlord testified she received a receipt from the organization that had sent her an e-transfer for \$2,800.00, and that it contained her correct email address. The Landlord submitted that the organization was "obviously" given her correct email address by the Tenants, as the Landlord and the Tenants had been communicating using the same email address for the Landlord.

The Landlord testified that the other organization, which had provided the Landlord two cheques on behalf of the Tenants, totalling \$1,450.00, informed the Landlord that Tenant JR knew the Landlord was being underpaid for rent, as JR had asked the organization to send the Landlord that amount.

The Tenants submitted as evidence two documents that contain the version of the Landlord's email the Landlord has stated is correct. They are both dated February 2, 2022; one is a screenshot titled "Late Rent Notice," and the other is a "Notice of Entry."

Analysis

Based on the parties' testimony, I find the Landlord served the 10 Day Notice on the Tenants by posting it to the door on February 2, 2022, in accordance with section 88 of the Act, and that the Notice was received by the Tenants on the same day.

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

The Tenants state they have submitted as evidence a copy of an e-transfer for \$3,000.00 sent to the Landlord for the February rent. I have described what was submitted as evidence, and it does not appear to be an e-transfer, rather, the step before an e-transfer is sent, which requires the sender to take another action, which in

this case would be to tap the “SEND MONEY” button. This discrepancy calls into question the Tenants credibility.

I note that the Tenants have not disputed that \$400.00 in rent remains outstanding for January 2022, testifying only that they were not aware they were short. The Tenants have also referred to a \$100.00 rent supplement for February 2022, but again have not disputed that the Landlord did not receive this amount.

As the Landlord has been consistent in her affirmed testimony, I am inclined to believe her version of events: that she did not receive an e-transfer from the Tenants for \$3,000.00, and that rent remains owing in the amount of \$400.00 for January 2022 and \$3,100.00 for February 2022, for a total amount of \$3,500.00.

Therefore, in accordance with section 55 of the Act, I find the Tenants must pay unpaid rent in the amount of \$3,500.00.

In accordance with section 72 of the Act, I allow the Landlord to retain \$1,550.00 of the Tenants’ security deposit in partial satisfaction.

I find the Landlord is entitled to a monetary order in the amount of \$1,950.00, as follows:

Unpaid rent	\$3,500.00
Security deposit	-\$1,550.00
Amount owed	\$1,950.00

Conclusion

The Tenants' application is dismissed.

The Landlord is entitled to a monetary order in the amount of \$1,950.00.

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: May 24, 2022

Residential Tenancy Branch