



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Shinebound Development Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Tenant: CNR, MNDCT, FFT
Landlord: OPR-DR, MNR-DR, FFL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear two crossed applications regarding a residential tenancy dispute.

The tenant applied on February 9, 2022 for:

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid rent, dated January 28, 2022 (the 10 Day Notice);
- compensation for monetary loss or other money owed; and
- recovery of the filing fee.

The landlord applied on February 14, 2022 for:

- an order of possession, having served the 10 Day Notice
- a monetary order for unpaid rent, having served the Notice; and
- recovery of the filing fee.

Those present 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 parties confirmed they had each received the other's Notice of Dispute Resolution Proceeding and evidence.

Preliminary Matter

Rule of Procedure 2.3 states:

2.3 Related issues Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As it is not related to the central issue of whether the tenancy will continue, during the hearing I dismissed, with leave to reapply, the tenant's application for compensation for monetary loss or other money owed.

Issues to be Decided

- 1) Is the tenant entitled to an order cancelling the 10 Day Notice?
- 2) Is the tenant entitled to the filing fee?
- 3) Is the landlord entitled to an order of possession and a monetary order for unpaid rent?
- 4) Is the landlord entitled to the filing fee?

Background and Evidence

The tenant submitted that his name was added to the tenancy agreement around March 2020; this was not disputed by the landlord. Both parties submitted as evidence a copy of a 2022 tenancy agreement naming the parties. The parties agreed that rent is \$3000.00 a month, due on the first of the month, and that no security deposit was paid.

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.

The Notice states the tenancy is ending as the tenant failed to pay rent in the amount of \$3,000.00 due on January 1, 2022.

The parties agreed the 10 Day Notice was served on the tenant in person on January 28, 2022.

The landlord testified they attempted to cash the tenant's postdated cheques, but they all bounced. The landlord submitted banking documentation in support. The January 2022 cheque was returned for insufficient funds; payment was stopped on the February–May cheques.

The landlord testified that the tenant owes outstanding rent as follows:

Month	Rent	Rent paid	Monthly outstanding
January 2022	\$3,000.00	\$0.00	\$3,000.00
February 2022	\$3,000.00	\$0.00	\$3,000.00
March 2022	\$3,000.00	\$0.00	\$3,000.00
April 2022	\$3,000.00	\$0.00	\$3,000.00
May 2022	\$3,000.00	\$0.00	\$3,000.00
Total			\$15,000.00

The tenant testified that he had been electrocuted four times by a non-functioning garbage disposal in the rental unit that was still drawing power, and that on December 26, 2021 a previous leak in the ceiling began to leak again. The tenant testified that he called the landlord on December 29, 2021, told her there were leaks all over, that the house was in disrepair, and asked her if he could get out of the tenancy agreement, which she agreed to. The tenant did not provide further testimony or evidence regarding a mutual agreement to end the tenancy, and still resides in the rental unit.

The tenant testified that he had intended to cover the rent by hosting Airbnb guests in the rental unit.

The tenant testified that the landlord told him he could have one month free rent while he found a new place; the tenant testified that the money for the January 2022 rent was drawn from his account anyway. The tenant testified the landlord told him she would give the January rent money back at the end of the month, but did not.

The tenant testified that his mental health then deteriorated, and that he “did not mean for this to go this way.”

Analysis

Section 46(4) of the Act provides that upon receipt of a 10 Day Notice, the tenant may, within 5 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

I find the 10 Day Notice was served on the tenant in person on January 28, 2022, in accordance with section 88 of the Act.

I find that the landlord's 10 Day Notice meets the form and content requirements 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 of the notice, states the reason for ending the tenancy, and is in the approved form.

I find that the tenant has failed to file an application for dispute resolution within 5 days of January 28, 2022, the timeline granted under section 46(4) of the Act. Accordingly, I find that the tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ends on the corrected effective date of the 10 Day Notice, February 7, 2022, and must vacate the rental unit.

The tenant has testified that the landlord promised not to charge him for January 2022 rent, but the tenant did not provide documentary evidence or witness testimony to support his claim. The landlord testified that the tenant owed rent for January 2022.

I find, on a balance of probabilities, the landlord's statement that rent was owing for January 2022 more plausible than the tenant's claim that the landlord agreed to not charge him rent for that month. Thus, I find the tenant owes the landlord rent for January–May 2022.

In accordance with section 55 of the Act, I find that the landlord is entitled to an order of possession and a monetary award for outstanding rent in the amount of \$15,000.00.

As the tenant still resides in 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, May 30, 2022.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the tenant is unsuccessful in his application, I decline to award him the filing fee. As the landlord is successful in their application, I order the tenant to pay the \$100.00 filing fee the landlord paid to apply for dispute resolution.

I find the landlord is entitled to a monetary order for \$15,100.00, as follows:

Outstanding rent	\$15,000.00
Filing fee	\$100.00
Owed to Landlord	\$15,100.00

Conclusion

The tenant's application is dismissed.

The landlord's application is granted.

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 \$15,100.00.

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: June 1, 2022

Residential Tenancy Branch