



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Randall North Real Estate Services
Inc. and [tenant name suppressed to protect privacy]

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 February 16, 2022 the tenant applied for an order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, dated February 7, 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 landlord confirmed she received the tenant's Notice of Dispute Resolution Proceeding (NDRP). The tenant submitted a copy of the 10 Day Notice as her only evidence.

The landlord stated that she had submitted responsive evidence to the Residential Tenancy Branch (RTB), but no evidence was uploaded to the file.

I informed the parties that their affirmed testimony is evidence and that the parties were at liberty to provide testimony on anything relevant to the claim.

Preliminary Matter

In the hearing, the landlord's agent confirmed the landlord's legal name, which was not disputed by the tenant. As the tenant had named an individual who works for the company, and not the legal name for the landlord, I have used the landlord's legal name

on the cover page of this decision and in the orders as it appears 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 a monetary order for unpaid rent?

Background and Evidence

The parties agreed on the following particulars regarding the tenancy. It began July 1, 2017; rent is \$987.00, due on the first of the month; and the tenant paid a security deposit.

A copy of the tenancy agreement was not submitted as evidence, but during the hearing, the landlord checked the tenancy agreement, and testified that the tenant paid a security deposit of \$475.00 by cash on June 23, 2017, and did not pay a pet deposit. The tenant testified she recalled paying a security deposit of \$450.00 and a pet damage deposit of \$450.00, both in cash. The tenant testified she had the receipts at home. Copies of the tenant's receipts were not submitted as evidence. The tenant testified that her former landlord could confirm the deposit payments; I gave the tenant the opportunity to contact the former landlord, but she declined.

The landlord testified she served the 10 Day Notice on the tenant in person on February 9, 2022; this was confirmed by the tenant.

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 indicates the tenancy is ending because the tenant has failed to pay rent in the amount of \$361.00 due on February 1, 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 testified that her youngest son lives with her, and rent is paid directly by social services. The tenant provided no further testimony regarding exceptional circumstances requiring more time to apply to dispute the Notice.

The landlord testified that the tenant made rent payments as follows:

| Month | Rent owing | Rent paid | Monthly amount outstanding | Total rent outstanding |
|---------------|-------------------|------------------|-----------------------------------|-------------------------------|
| December 2021 | \$973.00 | \$612.00 | \$361.00 | \$361.00 |
| January 2022 | \$987.00 | \$987.00 | \$0.00 | \$361.00 |
| February 2022 | \$987.00 | \$987.00 | \$0.00 | \$361.00 |
| March 2022 | \$987.00 | \$987.00 | \$0.00 | \$361.00 |
| April 2022 | \$987.00 | \$987.00 | \$0.00 | \$361.00 |
| May 2022 | \$987.00 | \$987.00 | \$0.00 | \$361.00 |

The landlord testified that in January 2022, rent increased to \$987.00; in the hearing this was not disputed by the tenant.

The tenant testified that as proof the rent was paid for February, she gave the rent receipt to the caretaker (GF). GF testified that they had a receipt saying the tenant paid rent on February 18, 2022. The landlord indicated the receipt being referred to by the tenant and GF was for “rent and occupancy” only.

The landlord testified they always provided the tenant with “rent and occupancy” receipts, but she refused them.

The tenant testified she had the \$361.00 on February 6, 2022 and tried to give it to the caretaker (GF), but he refused it.

GF testified that he did not recall the tenant offering cash for arrears, but if she had, he would have told her to take it to the office as it was not his job to collect money – he is a caretaker.

Analysis

Based on the parties’ testimony, I find the landlord served the tenant the 10 Day Notice in person on February 9, 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, gives the address of the rental unit, states an effective date, states the grounds for ending the tenancy, and is in the approved form.

When I asked the tenant why she needed more time to apply to dispute the 10 Day Notice, she provided testimony regarding her son living with her, and that her rent is paid directly by social services. 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 explanation provided by the tenant is 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 February 9, 2022, the application deadline was 5 days later: February 14, 2022. However, the tenant applied to cancel the 10 Day Notice on February 16, 2022. Therefore, in accordance with section 46(5) of the Act, the tenant is conclusively presumed to have accepted that the tenancy ended on February 19, 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, May 30, 2022.

In accordance with section 55 of the Act, I find the landlord is entitled to outstanding rent in the amount of \$361.00.

In accordance with section 72 of the Act, I allow the landlord to retain \$361.00 of the tenant's security deposit in satisfaction.

Given the discrepancy between the parties' testimony on the amount of the security and pet damage deposits paid by the tenant, I make no findings on the deposit amounts. The parties are advised to deal with the remainder of the deposit or deposits in accordance with section 38 of the Act.

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 authorized to retain \$361.00 of the tenant's security deposit.

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 08, 2022

Residential Tenancy Branch