



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-MT, CNR, RP, PSF, OLC / OPR-DR, FFL

Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the “**Act**”). The landlord’s application for:

- an order of possession for non-payment of rent pursuant to section 55;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

And the tenant’s application for:

- an order that the landlord make repairs to the rental unit pursuant to section 32;
- the cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent (the “**10 Day Notice**”) pursuant to section 46;
- the cancellation of the Two Month Notice to End Tenancy for Landlord’s Use of Property (the “**Two Month Notice**”) pursuant to section 49;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order that the landlord provide services or facilities required by law pursuant to section 65; and
- more time to make an application to cancel the Two Month Notice pursuant to section 66.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:24 am in order to enable the tenant to call into the hearing scheduled to start at 11:00 am. The landlord’s property manager (“**MJ**”) attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I used the teleconference system to confirm that MJ and I were the only ones who had called into the hearing.

MJ testified that the tenant served the landlord with the notice of dispute resolution proceeding package for the tenant’s application. MJ testified that she served the tenant

with the landlord's documentary evidence package on May 30, 2022 by registered mail. She provided a Canada Post tracking number confirming this mailing, which is reproduced on the cover of this decision.

Mj testified that the landlord first made its application by way of a *ex parte*, "direct request" process. She stated that after filing at, the Residential Tenancy Branch (the "RTB") notified her of the tenant's application. She stated that she understood that her application could not be adjudicated until the tenant's application to cancel the 10 Day Notice had concluded. As such, she testified that she did not serve the tenant with her notice of dispute resolution proceeding package, as she understood that it was not necessary to do so.

MJ's understanding of the obligations of the landlord is incorrect. Once the RTB discovered that the tenant had made an application to dispute the 10 Day Notice, it converted the landlord's application from an *ex parte* "direct request" application to a participatory application and scheduled it at the same time as the tenant's application.

The landlord is still obligated to serve the tenant with notice of its application.

However, I do not find that the landlord's failure to serve the tenant with its application materials prevents this hearing from going forward. The tenant's application to cancel the 10 Day Notice is, in substance, the same as the landlord's application for an order of possession based on the 10 Day Notice. In both of these applications the landlord must prove all of the same elements necessary to make out its case. The landlord bears the evidentiary burden in both.

As such, I am confident that the tenant is aware but there is hearing today, and that the validity of the 10 Day Notice will be assessed. Whether this assessment occurs as part of the tenant's application, or of the landlord's, makes no difference.

In light of the fact the landlord did not serve the tenant with its application materials, I dismiss the landlord's application with leave to reapply. I will, however, assess the validity of the 10 Day Notice as part of the tenant's application. In the event that I find the 10 Day Notice is valid, section 55 of the Act obligates me to issue an order of possession and the monetary order for unpaid rent in favor of the landlord.

Preliminary issue - Effect of Tenants' Nonattendance

Rule of Procedure 6.6 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, the landlord bears the evidentiary burden to show it is more likely than not that the 10 Day and the Two Month Notices are valid. The tenant bears the onus to show it is more likely than not to show that she is entitled to the other relief she seeks.

As the tenant failed to attend the hearing or present any evidence in support of her application, I find that she has failed to discharge her evidentiary burden. As such, I dismiss the following portions of her application, without leave to reapply:

- order that the landlord make repairs to the rental unit pursuant to section 32;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62; and
- an order that the landlord provide services or facilities required by law pursuant to section 65.

Preliminary Issue – Landlord Agrees to Cancel Two Month Notice

At the outset of the hearing, MJ stated that the owner of the rental unit no longer intended to move into the rental unit, as indicated on the Two Month Notice. She testified that the tenant's refusal to vacate the rental unit, coupled with her failure to pay rent, changed his financial circumstances, and led the owner to make alterations to his living arrangements which no longer required him to live in the rental unit. As such, MJ stated that the landlord agreed to cancel the Two Month Notice.

The balance of this decision will address the validity of the 10 Day Notice.

Issues to be Decided

Is the tenant entitled to an order cancelling the 10 Day Notice?

If not, is the landlord entitled to an order of possession and a monetary order for unpaid rent?

Background and Evidence

While I have considered the documentary evidence and the testimony of MJ, not all details of her submissions and arguments are reproduced here. The relevant and important aspects the landlord's claims and my findings are set out below.

The parties entered into a written, fixed term tenancy agreement starting March 15, 2021 and ending March 30, 2022. Monthly rent is \$1,650 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$825, which the landlord continues to hold in trust for the tenant.

MJ testified that the tenant was routinely in rental arrears. She testified that as of February 1, 2022, the tenant was \$1,800 in rental arrears and owed the landlord \$100 for a strata fine the landlord incurred in November 2021 as a result of the tenant storing furniture in the rental unit's parking spot. The landlord submitted copy of its tenant ledger into evidence supporting this amount.

MJ testified that she notified the tenant of this strata fine, in writing, in November 2021. The landlord did not provide a copy of this notice into evidence.

On February 25, 2022, the landlord served the tenant with the 10 Day Notice by placing a copy of it in the rental unit's mailbox. It specified rental arrears as \$1,900 and listed an effective date of March 7, 2022. The tenant disputed this notice on February 28, 2022.

MJ testified that, to date, the tenant has not paid any portion of the amount listed on the tenancy agreement. Furthermore, she testified that the tenant has not paid any rent for the months of March, April, May, or June 2022.

To date, MJ testified that the tenant owes the landlord \$8,400 in rental arrears (this amount excludes any fines the tenant may have caused the landlord to incur).

Analysis

I accept the undisputed testimony of MJ in its entirety. Based on this testimony and a copy of the tenancy agreement submitted into evidence, I find that the tenant's monthly rent is \$1,650 and is payable on the first day of the month.

Based on the ledger submitted into evidence, I find that, as of February 25, 2022, the tenant was \$1,800 in rental arrears. I accept MJ's testimony that the tenant has failed to make any payment on this amount, or any rent payment whatsoever for March to June 2022 (inclusive) rent.

Section 26 of the Act states:

Rules about payment and non-payment of rent

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.

I note that, while making no findings of whether a failure or restriction occurred, a failure of a landlord to make repairs or the landlord's restriction of services or facilities are not reasons that gives a tenant the right to deduct all or a portion of the monthly rent.

As such, I find that by not paying \$1,800 in rent as of February 1, 2022, the tenant breached her obligations under the tenancy agreement and section 26(1) of the Act.

Section 46 of the Act allows a landlord to issue a notice to end tenancy for nonpayment of rent. Based on the undisputed testimony of MJ, supported by the ledger, I find that \$1,800 in rent arrears was owing as of the date the 10 Day Notice was issued.

The 10 Day Notice listed rental arrears as \$1,900. \$100 of this amount was the strata fine the landlord alleges the tenant caused the landlord to incur. Such a fine is not properly included on a notice to end tenancy for nonpayment of rent, as it is not rent owed. As such, the 10 Day Notice does not accurately state the amount of rent owed at the time it was issued.

I find that by incorrectly filling out the amount of rental arrears owed, the 10 Day Notice does not comply with section 52 of the Act (which requires the landlord to use the correct form of notice, which implicitly means that that form is filled out correctly).

However, section 68(1) of the Act states:

Director's orders: notice to end tenancy

68 (1) If a notice to end a tenancy does not comply with section 52 [*form and content of notice to end tenancy*], the director may amend the notice if satisfied that

- (a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and
- (b) in the circumstances, it is reasonable to amend the notice.

In the circumstances, as MJ advised the tenant of the strata fine, and the tenant knew or ought to have known that she was in rental arrears, I find that the tenant should have known the correct amount of arrears owed. I find that it is reasonable to amend the 10 Day Notice to Change the amount of arrears from \$1,900 to \$1,800, in light of the fact that the bulk of the amount listed on the 10 Day Notice was for arrears, and in light of the fact that subsequent to the 10 Day Notice being issued, the tenant ceased paying rent altogether.

As such, I find that the 10 Day Notice was issued for valid reasons (the tenant was \$1,800 in rental arrears), and (after having been amended as indicated) meets the form and content requirements set out at section 52 of the Act.

Accordingly, I dismiss the tenant's application to cancel the 10 Day Notice, without leave to reapply.

Sections 55(1) and (1.1) state:

Order of possession for the landlord

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 such, I find the landlord is entitled to an order of possession pursuant to section 55(1) of the Act. At the hearing, MJ stated that the landlord is seeking an order of possession to be effective at the end of June, 2022, in light of the number of possessions the tenant has in the rental unit and as she has a child living with her. I find that this effective date is a reasonable one.

Based on MJ's testimony, I find that the tenant failed to pay any rent for March, April, May, or June 2022, and that (when combined with the \$1,800 owed as of February 1, 2022), the tenant is \$8,400 in rental arrears.

Pursuant to section 55(1.1) of the Act, I order that the tenant pay the landlord this amount.

As I have dismissed the landlord's application (see above), I cannot order that the tenant reimbursed the landlord its filing fee.

Pursuant to section 72(2) of the Act, the landlord may retain the security deposit (\$825) in partial satisfaction of the monetary orders made above.

Conclusion

Pursuant to sections 62, 65, 67, and 72 of the Act, I order that the tenant pay the landlord \$7,575, representing the following:

Description	Amount
Rental arrears	\$8,400.00
Deposit credit	-\$825.00
Total	\$7,575.00

Pursuant to section 55 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlord by June 30, 2022 at 1:00 pm.

I order the landlord to serve the tenant with a copy of this decision and the attached orders within three days of receiving it from the RTB.

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 10, 2022