



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Brown Bros Agencies Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a tenancy. On March 4, 2022 the tenants applied for

- an order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, dated March 1, 2022 (the 10 Day Notice).

The hearing was attended by the landlord but not the tenants. The landlord was 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 testified that he served his responsive evidence on the tenants on June 3, 2022 and submitted tracking numbers in support, as noted on the first page of the decision. I find the landlord served the tenants in accordance with section 88 of the Act, and deem the evidence received by the tenants on June 8, 2022, in accordance with section 90 of the Act.

Preliminary Matter

The landlord testified that as the tenants vacated the rental unit on June 15, 2022, the landlord was not seeking an order of possession, only a monetary order for unpaid rent.

As the landlord has testified the tenants vacated the rental unit, the tenant's application for an order to cancel the 10 Day Notice is dismissed on this basis.

The remainder of the decision will consider whether the landlord is entitled to a monetary order for unpaid rent.

Issue to be Decided

1. Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The landlord provided the following particulars regarding the tenancy. It began January 1, 2016; rent was \$669.00, due on the first of the month; and the tenants paid a security deposit of \$330.00, which the landlord still holds.

A tenancy agreement is submitted as evidence; it indicates rent is due on the first of the month.

The landlord testified the 10 Day Notice was served on the tenants in person on March 1, 2022, and submitted a proof of service form signed by tenant KJ; the tenant's application indicates the Notice was served as described.

As a copy of the 10 Day Notice was submitted as evidence. It is signed and dated March 1, 2022 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 tenants have failed to pay rent in the amount of \$1,995.00, due on March 2, 2022.

The landlord indicated that the 10 Day Notice was completed and served on the first of the month because the tenants had told the property manager they did not have the March 2022 rent and would not be paying it.

The landlord testified that as of February 2022 the rent increased from \$660.00 to \$669.00, and submitted a rent increase form in support.

The landlord testified that the tenants owed outstanding rent as follows, and submitted a tenant ledger in support:

Month	Rent	Rent paid	Monthly outstanding
January 2022	\$660.00	\$0.00	\$660.00
February 2022	\$669.00	\$0.00	\$669.00
March 2022	\$669.00	\$0.00	\$669.00
April 2022	\$669.00	\$670.00	-\$1.00
May 2022	\$669.00	\$0.00	\$669.00
June 2022	\$669.00	\$0.00	\$669.00
Total			\$3,335.00

The landlord submitted a second 10 Day Notice, dated June 2, 2022 (the June 10 Day Notice). The tenants did not amend their application to dispute the June 10 Day Notice.

Analysis

Section 46(1) of the Act states that 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.

The landlord testified that in this tenancy the rent was due on the first of the month.

Based on the parties' evidence, I find the landlord served the tenants the 10 Day Notice in person on March 1, 2022.

As rent was not overdue until March 2, 2022, I find the 10 Day Notice was served prematurely, and is therefore invalid and without effect. The 10 Day Notice is cancelled.

Considering the June 10 Day Notice, Sections 55 (1) and (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.

As the tenants did not apply to dispute the June 10 Day Notice, did not amend their application to dispute the June 10 Day Notice, and were not present in the hearing, I decline to adjudicate the June 10 Day Notice.

Conclusion

The 10 Day Notice is cancelled.

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: July 04, 2022

Residential Tenancy Branch