



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Team Approach Property Services
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, OLC, PSF, FFT

Introductions

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute. The tenants applied on March 11, 2022 for:

- an order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, dated March 10, 2022 (the 10 Day Notice);
- an order for the landlord to comply with the Act, regulation, and/or the tenancy agreement;
- an order for the landlord to provide services or facilities required by the tenancy agreement or law; and
- the filing fee.

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; she was made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The landlord testified that the tenants had vacated the rental unit by March 13, 2022 and had not provided a forwarding address. The landlord testified she served her responsive evidence on the tenants by email on June 5, 2022 and received a delivery receipt.

Section 43 of the *Residential Tenancy Regulation* (the Regulation) provides that documents may be served on a person by emailing a copy to an email address provided as an address for service by the person. As the landlord did not submit oral or documentary evidence that the tenants provided the landlord with an email address for service, and the landlord did not demonstrate that the tenants received her evidence, I

will not consider it in my decision. I do not consider the landlord's statement that she received a delivery receipt proof that the tenants received the landlord's evidence.

As the tenants did not attend the hearing to present their evidence as required by Rule 7.4, I have not considered their materials in my decision.

Preliminary Matters

The landlord testified that as the tenants had vacated the rental unit by March 13, 2022, the landlord was not seeking an order of possession, only a monetary order for unpaid rent.

As the landlord has testified the tenants have vacated the rental unit, the entirety of the tenants' application 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

While I have considered all the testimony and documentary evidence before me which complies with the Rules of Procedure, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my related findings are set out below.

The landlord confirmed the following particulars regarding the tenancy. It began June 1, 2021; rent is \$1,900.00, due on the first of the month; and the tenants paid a security deposit of \$950.00 and a pet damage deposit of \$475.00, which the landlord still holds.

A copy of the 10 Day Notice is submitted as evidence. The landlord testified the Notice was served on the tenants by email and non-registered mail on March 10, 2022. The tenants' application indicates the Notice was received by email, and left in a mail slot or box, and that the tenants received it on March 10, 2022.

The 10 Day Notice is signed and dated March 10, 2022 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 Notice indicates the tenancy is ending because the tenants failed to pay rent in the amount of \$475.00 due on March 1, 2022.

The landlord testified that the property owner had been notified by the city that the unit had not been properly permitted, and that she needed to make changes to the unit to bring it up to code.

The landlord testified that the owner offered the tenants a rent abatement of 25 percent (\$475.00), beginning retroactively for June 2021, to compensate the tenants for the inconvenience while work was being done in their unit.

The landlord testified the tenants agreed to the rent abatement.

The landlord testified that on January 29, 2022, when the unit met code and an occupancy permit was granted, the landlord gave the tenants a letter providing one month's notice that the rent would return to \$1,900.00 on March 1, 2022.

The landlord testified that the tenants did not agree with the rent returning to \$1,900.00, paid only \$1,425.00 for March 2022 ($\$1,900.00 - \$475.00 = \$1,425.00$), and filed for dispute resolution.

Analysis

I find that the landlord sufficiently served the 10 Day Notice on the tenants on March 10, 2022, in accordance with section 71 of the Act, and that it was received by the tenants on the same day.

I find the 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, states the reason for ending the tenancy, and is in the approved form.

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.

Having found the 10 Day Notice complies with section 52, and having dismissed the tenant's application, I find I must grant the landlord a monetary order for unpaid rent.

I accept the undisputed affirmed testimony of the landlord that the tenants agreed to a 25 percent rent abatement while work was being done to their unit, that once the work was done the tenants were given one month's notice that the rent would return to \$1,900.00 on March 1, 2022, and that the tenants paid only \$1,425.00 rent in March 2022.

In accordance with section 55 of the Act, I find the landlord is entitled to outstanding rent in the amount of \$475.00.

In accordance with section 72 of the Act, I allow the landlord to retain \$475.00 of the tenants' security deposit in satisfaction of the amount owing.

Conclusion

The landlord is authorized to retain \$475.00 of the tenants' security deposit in satisfaction of the amount owing for unpaid rent.

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