



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR-MT, FFT

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a tenancy. On April 12, 2022 the tenant applied for:

- an order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, dated April 4, 2022 (the 10 Day Notice), noting that he needed more time to dispute the Notice; and
- the filing fee.

The hearing was attended by the landlord but not the tenant. 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 confirmed he did not serve responsive evidence on the tenant.

Preliminary Matter

The landlord testified that as the tenant had vacated the rental unit on, or around, June 18, 2022, the landlord was not seeking an order of possession, only a monetary order for unpaid rent.

As the landlord has testified the tenant vacated the rental unit, the tenant's application, for an order to cancel the 10 Day Notice and recovery of the filing fee, 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 regarding the tenancy. It was a fixed-term tenancy which began June 28, 2021; rent was \$1,470.00, due on the first of the month; and the tenant paid a security deposit of \$735.00, which the landlord still holds.

A copy of the tenancy agreement was submitted as evidence by the tenant. It indicates that rent is \$1,470.00, that the tenant paid a security deposit of \$735.00, and that the tenancy began August 1, 2021 for a fixed term ending on July 31, 2022, and “at the end of this time the tenancy will continue on a month to month basis, or another fixed length of time, unless the tenant gives notice to end the tenancy at least one clear month before the end of the term.”

The landlord testified the 10 Day Notice was served on the tenant by attaching it to the door on April 4, 2022; the tenant’s application indicates the Notice was posted to the door and received on April 4, 2022.

As a complete copy of the 10 Day Notice was not submitted as evidence, I gathered the particulars of the Notice from the landlord during the hearing, and gave the landlord the opportunity to upload a copy of the notice by 4:00 p.m. on the day of the hearing, which he did.

The 10 Day Notice 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 \$2,940.00, due on April 1, 2022.

The landlord testified that the tenant failed to pay the rent of \$1,470.00 a month for March through June 2022, for a total of \$5,880.00.

The landlord testified that he is also seeking the unpaid rent for July 2022, as the tenant broke the fixed-term tenancy which was to end at the end of July 2022.

The landlord testified that the tenant had emailed the landlord to say he had vacated the unit, but that he intended to make payments of \$740.00 a month to pay off the unpaid rent.

Analysis

Based on the parties' evidence, I find the landlord served the tenant the 10 Day Notice by attaching it to the door on April 4, 2022, in accordance with section 88 of the Act, and that the tenant received it on the same date, as indicated in his application.

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.

Section 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.

The landlord testified that the tenant owes \$5,880.00 in unpaid rent for March through June 2022, and that the tenant broke the fixed term tenancy which was to end July 31, 2022. The tenancy agreement in evidence supports the landlord's testimony on the duration of the fixed term tenancy.

[Residential Tenancy Policy Guideline 3.](#) Claims for Rent and Damages for Loss of Rent states:

Where a tenant vacates or abandons the premises before a tenancy agreement has ended, the tenant must compensate the landlord for the damage or loss that results from their failure to comply with the legislation and tenancy agreement (section 7(1) of the RTA and the MHPTA). This can include the unpaid rent to the date the tenancy agreement ended and the rent the landlord would have been entitled to for the remainder of the term of the tenancy agreement.

Therefore, I find the landlord is entitled to rent for July 2022, as the tenant vacated the unit before the tenancy agreement ended.

In accordance with section 55 of the Act, I find the landlord is entitled to outstanding rent in the amount of \$7,350.00.

In accordance with section 72 of the Act, I allow the landlord to retain \$735.00 of the tenants' security deposit in partial satisfaction of the amount owing.

I find the landlord is entitled to a monetary order for \$6,615.00 ($\$7,350.00 - \$735.00 = \$6,615.00$).

Conclusion

The landlord is granted a monetary order in the amount of \$6,615.00.

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: July 04, 2022

Residential Tenancy Branch