



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, CNR

Introduction

This hearing was scheduled for 11:00 a.m. on this date, via teleconference call, to deal with the tenant's two joined applications to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice") and a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice").

The landlords and their son appeared and were affirmed. The landlords' son was excluded from the hearing until called to testify.

There was no appearance on part of the tenant despite leaving the teleconference call open until 11:30 a.m.

The landlords confirmed they received a Notice of Dispute Resolution Proceeding from the tenant indicating she was disputing the 2 Month Notice although some pages were missing and the landlords obtained a courtesy copy from the Residential Tenancy Branch. The landlords confirmed they were served with a Notice of Dispute Resolution Proceeding with respect to the tenants dispute of the 10 Day Notice. Also, the tenant did not serve any evidence upon the landlords. Nevertheless, the landlords were prepared to proceed and they served the tenant with evidence via email on August 14, 2022 using a pre-agreed email address for service. The landlords have an RTB-51 which records the parties' agreement to be served by email. I was satisfied the landlords served the tenant with their evidence and I admitted it for consideration in making this decision.

Although the tenant did not appear at the hearing, the notices to end tenancy were disputed and the landlords still bear the burden to prove an entitlement to an Order of Possession and Monetary Order. Accordingly, I continued to hear from the landlords.

Issue(s) to be Decided

1. Should the 2 Month Notice and 10 Day Notice be upheld or cancelled?
2. Are the landlords entitled to an Order of Possession?
3. Are the landlords entitled to a Monetary Order for unpaid rent?

Background and Evidence

The parties entered into a one year fixed term tenancy starting on July 1, 2019 and ending on July 1, 2020. The parties entered into a subsequent month to month tenancy starting on August 1, 2020. The landlords collected a security deposit of \$1100.00 and a pet damage deposit of \$1100.00. The monthly rent of \$2200.00 is payable on the first day of every month.

On April 25, 2022 the landlords served the tenant with the 2 Month Notice, in person. The 2 Month Notice has a stated effective date of June 30, 2022 and indicates the landlords are ending the tenancy so that their child may occupy the rental unit. The tenant disputed the 2 Month Notice within the time limit for doing so.

The landlords called their son to testify. The landlord's son testified that he intends to occupy the rental unit on a long term basis after the tenancy ends. The landlord's son confirmed he will occupy the rental unit for at least six months after the tenancy ends. The landlord's son stated he currently resides with his parents but he has graduated from post-secondary school and is working full time now and he seeks to move out of his parents' house and into his own home.

On May 16, 2022 the landlords served the tenant with the 10 Day Notice, in person. The 10 Day Notice has a stated effective date of May 26, 2022 and indicates rent in the sum of \$2500.00 is outstanding along with a notation this is the sum of \$300.00 outstanding for April 2022 and \$2200.00 outstanding for May 2022. The landlords affirmed that they served the tenant with all three pages of the 10 Day Notice, along with a Schedule of Parties.

The tenant filed to dispute the 10 Day Notice within the time limit for doing so.

The landlords testified that after serving the tenant with the 10 Day Notice the tenant paid \$1600.00 on May 20, 2022 and they received a \$600.00 cheque on behalf of the tenant on July 2, 2022; however, no other payments were received and the tenant continues to occupy the rental unit.

The landlords requested an order of possession effective August 31, 2022.

The landlords calculate that \$6900.00 in rent has not been paid for months up to and including August 2022. The landlords are willing to give the tenant credit of \$2200.00 as compensation for receiving the 2 Month Notice as it is still their intention to have their son move into the rental unit, bringing the balance of rent owing to \$4700.00. The landlords further requested that they obtain my authorization to apply the security deposit and pet damage deposit against the outstanding balance of rent.

Analysis

Where a notice to end tenancy comes under dispute, the landlord bears the burden to prove the tenant was served with a valid notice to end tenancy and the tenancy should end for the reason(s) indicated on the notice. The burden of proof is based on the balance of probabilities.

I have reviewed the 2 Month Notice and the 10 Day Notice before me. Both notices are in the approved form and duly signed. Next, I turn my mind to whether the landlords have a valid and permissible reason for ending the tenancy.

Under section 49 of the Act, a landlord may end a tenancy by issuing a 2 Month Notice where the landlord's child intends in good faith to occupy the rental unit. I am satisfied the landlords served the tenant with a 2 Month Notice on April 25, 2022 based on the unopposed submissions before me. The landlords submitted to me that their son intends to occupy the rental unit and they served the tenant with a 2 Month Notice. The landlords' son was called to testify and he also stated he intends to occupy the rental unit after the tenancy ends for at least six months and the reason for wanting to move into the rental unit is because he is of an age and has income to move into his own home. I find the reason put forth by the landlord's son has the ring of truth and to be reasonably likely. The tenant did not appear to provide any rebuttal evidence or argument. Based on what is before me, I uphold the 2 Month Notice.

Where a tenant receives a 2 Month Notice, the tenant is entitled to withhold rent for their last month of tenancy as compensation payable under section 51(1) of the Act. As such, the tenant would have been entitled to withhold rent for June 2022 but not for any month prior to June 2022. As such, the tenant was obligated to pay the rent that was due for April 2022 and May 2022 on its due date.

Where a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice, as provided under section 46 of the Act. Upon receiving a 10 Day Notice, the tenant has five days to pay the outstanding rent or file an Application for Dispute Resolution to dispute the 10 Day Notice so as to provide a basis for cancellation of the 10 Day Notice.

As for the 10 Day Notice, I accept the landlord's undisputed evidence as to service of the 10 Day Notice and that \$300.00 of the rent due for April 2022 and the rent for May 2022 had not been paid when the 10 Day Notice was served on May 16, 2022. I also accept the undisputed evidence of the landlords as to the two payments they received after the 10 Day Notice was served. Accordingly, I find the tenant failed to pay all of the outstanding rent within five days after receiving the 10 Day Notice. The tenant did not appear at the hearing to rebut the landlord's evidence or provide a basis for me to cancel the 10 Day Notice. As such, I find the tenancy came to an end due to unpaid rent on May 26, 2022.

The landlords requested an Order of Possession effective August 31, 2022. Section 55(1) of the Act provides as follows:

- 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.

In this case, I have upheld the 2 Month Notice and the 10 Day Notice and I am satisfied they meet the form and content requirements of section 52 of the Act. Accordingly, I find the criteria of section 55(1) have been met and the landlords are entitled to an Order of Possession. Provided to the landlords with this decision is an Order of Possession effective August 25, 2022 as they requested.

Section 55(1.1) of the Act further provides:

- (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.

In this case, one of the applications before me pertains to a 10 Day Notice issued under 46 of the Act and I have upheld the 10 Day Notice. Accordingly, I find the landlords entitled to a Monetary Order for unpaid rent pursuant to section 55(1.1) of the Act.

The tenant has benefited from continued occupation of the rental unit while awaiting the outcome of this proceeding and I have ordered the tenancy ended as of August 31, 2022. As such, I find the landlords entitled to a Monetary Order for any unpaid rent for months up to and including August 2022.

The landlords are agreeable to giving credit of one month's rent to the tenant as compensation for receiving the 2 Month Notice which I honour as it is beneficial to the tenant. The landlords also requested that I offset the unpaid rent by the tenant's security deposit and pet damage deposit which I find non-prejudicial to the tenant since it reduces the Monetary Order I issue with decision.

Pursuant to the authority afforded me under section 72 of the Act, I offset the rent by the compensation payable under section 51(1) for receiving the 2 Month Notice and the sum of the security deposit and pet damage deposit. Accordingly, the landlords are authorized by me to retain the tenant's deposits and the tenant may not make any request for their return.

I find the net amount of rent payable and I provide the landlords with a Monetary Order, to be calculated as follows:

Unpaid rent per 10 Day Notice issued May 16, 2022	\$2500.00
Payments received by landlords (\$1600.00 + \$600.00)	(2200.00)
Rent for June 2022	2200.00
Rent for July 2022	2200.00
Rent for August 2022	2200.00
Less: compensation payable under section 51(1)	(2200.00)
Less: security deposit and pet damage deposit	<u>(2200.00)</u>
Net rent payable and Monetary Order for landlords	\$2500.00

Conclusion

The 2 Month Notice and the 10 Day Notice are upheld. The landlords are provided an Order of Possession effective on August 31, 2022.

The landlords are authorized to retain the tenant's security deposit and the pet damage deposit and have been provided a Monetary Order in the net amount of \$2500.00 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: August 25, 2022

Residential Tenancy Branch