



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing was scheduled to deal with a tenant's application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice").

The tenant did not appear at the hearing despite leaving the teleconference call open approximately 30 minutes.

The landlords appeared at the hearing and were affirmed.

The landlords acknowledged the tenant served them with his hearing package and they were prepared to proceed.

The landlords testified that the tenant vacated the rental unit on August 31, 2022 and they have regained possession of the rental unit. The landlords seek a Monetary Order against the tenant by way of this proceeding.

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.

(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.

[My emphasis underlined]

Since the tenant has already vacated and the landlords have regained possession of the unit, the landlords do not require an Order of Possession and I do not provide one with this decision. I proceeded to hear from the landlords to determine the landlord's entitlement as provided under section 55(1.1).

I have amended the address of the rental unit to include the unit number, as indicated on the tenancy agreement and 10 Day Notice.

Issue(s) to be Decided

Are the landlords entitled to a Monetary Order for unpaid rent under section 55(1.1) of the Act?

Background and Evidence

The tenancy started on October 1, 2021 for a fixed term of one year. The landlords collected a security deposit and pet damage deposit in the combined amount of \$3000.00. The monthly rent was set at \$4200.00 payable on the first day of every month.

In May 2022, the tenant only paid \$1200.00 toward the monthly rent leaving \$3000.00 outstanding. On May 10, 2022 the landlords issued a 10 day Notice to the tenant indicating \$3000.00 was owing for May 2022 rent and a stated effective date of May 20, 2022.

In filing to dispute the 10 Day Notice, the tenant, the tenant acknowledged receipt of the 10 Day Notice on May 13, 2022 and indicated the reason for disputing the 10 Day Notice was that he needed more time to make more money with his new business. The tenant subsequently made submissions that he was disputing the 10 Day Notice because the blinds in the rental unit were broken.

The landlords testified that the tenant continued to occupy the rental unit until August 31, 2022 and did not pay any monies toward his continued use and occupation for the months of June 2022 onwards.

The landlords requested authorization to retain the tenant's deposits, to be applied toward the outstanding rent.

The landlords also stated they have also suffered a loss of rent for September 2022 and the tenant caused damage to the rental unit.

Included in evidence before me was a copy of the tenancy agreement and the 10 Day Notice.

Analysis

Section 55 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.

(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, the tenant received a 10 Day Notice issued under section 46 of the Act and filed to dispute the 10 Day Notice.

Upon review of the 10 Day Notice submitted into evidence by the tenant, I find the landlords issued a 10 Day Notice in the approved form and it is duly completed. Although the effective day may be incorrect if the tenant received the 10 Day Notice on May 13, 2022, an incorrect effective date does not invalidate a 10 Day Notice. Rather,

the effective date would automatically change to read May 23, 2022 under section 53 of the Act.

The Act provides very limited and specific circumstances when a tenant may legally withhold or make deductions from rent payable. The tenant did not appear at the hearing and in filing his Application for Dispute Resolution did not provide a legal basis for not paying the rent that was payable under the tenancy agreement. Therefore, I uphold the 10 Day Notice and dismiss the tenant's Application for Dispute Resolution.

In the circumstances before me, I find section 55(1.1) applies. Accordingly, I find the landlords entitled to recover the balance of rent owing for May 2022 in the amount of \$3000.00. Since the tenant disputed the 10 Day Notice and remained in possession of the rental unit until August 31, 2022, without paying any rent, I find the tenant's actions delayed the landlord's ability to regain possession of the rental unit until then and suffer unpaid rent for an additional three months. As such, I further find the landlords entitled to recover unpaid rent for June 2022 through to August 31, 2022. Therefore, I find the landlord's entitled to recovery of unpaid rent for May 2022 through August 2022 in the sum of \$15600.00 [calculated as \$3000.00 + (3 x \$4200.00)].

Under section 72 of the Act, I may offset amounts owing between the parties and I grant the landlords' request to retain the tenant's deposits in partial satisfaction of the unpaid rent. Therefore, I provide the landlords with a Monetary Order in the net amount of \$12600.00 [\$15600.00 - \$3000.00 in deposits].

As for the landlord's submission that they suffered loss of rent for September 2022, I did not further consider that submission for this proceeding as I consider loss of rent after the tenancy ended on August 31, 2022 to be loss of revenue and not unpaid rent that I may award under section 55(1) of the Act. As for the landlord's assertion the tenant caused damage to the rental unit, I did not hear such claims as I may not award the landlords compensation for damage under section 55(1) of the Act. The landlords were informed of their right to pursue other damages or losses not awarded under section 55(1) by making their own Landlord's Application for Dispute Resolution.

Conclusion

The landlords are authorized to retain the tenant's security and pet damage deposits in partial satisfaction of unpaid rent. The landlords are provided a Monetary Order in the net amount of \$12600.00 for unpaid rent for the months of May 2022 through August 2022 under sections 55(1.1) and 72 of the Act.

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: September 28, 2022

Residential Tenancy Branch