



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenants: CNR

Landlord: OPR, MNRL-S, MNDCL-S, FFL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear crossed applications regarding a residential tenancy dispute.

The tenants applied on April 27, 2022 for:

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent, dated April 20, 2022 (the 10 Day Notice).

The landlord applied on May 9, 2022 for:

- an order of possession, having issued a 10 Day Notice to End Tenancy for Unpaid Rent, dated April 7, 2022;
- recovery of unpaid rent, with a request to retain the security deposit;
- compensation for monetary loss or other money owed, with a request to retain the security deposit; and
- recovery of the filing fee.

Those present were 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.

Neither party raised an issue regarding the service of the respective Notices of Dispute Resolution Proceeding; I instructed the parties to advise me if a piece of evidence was referred to they did not have.

Preliminary Matter

As the landlord confirmed his application for compensation for monetary loss or other money owed is regarding unpaid rent, I find it is a duplicate of the other claims before me and dismiss it without leave to reapply.

Issues to be Decided

- 1) Are the tenants entitled to an order cancelling the 10 Day Notice?
- 2) If not, is the landlord entitled to an order of possession and a monetary order for unpaid rent?
- 3) Is the landlord entitled to the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties agreed on the following particulars regarding the tenancy. It began February 1, 2021; rent is due on the first of the month; and the tenants paid a security deposit of \$750.00, which the landlord still holds.

A copy of the tenancy agreement is submitted as evidence, indicating that rent is \$1,500.00 a month. Section 9 of the tenancy agreement states: "the landlord must give the tenant a receipt for rent paid in cash."

During my review of the tenancy details at the beginning of the hearing, which included confirming that rent is \$1,500.00, tenant DL stated she agreed with the information. However, during later testimony she stated that rent was lesser amounts, as will be described.

A copy of the 10 Day Notice is submitted as evidence. It is signed and dated April 20, 2022 by the landlord's agent, gives the address of the rental unit, states an effective date of April 30, 2022, states the grounds for ending the tenancy, and is in the approved form.

The Notice states the tenancy is ending as the tenants failed to pay rent in the amount of \$3,880.00 due on April 1, 2022.

Witness for the landlord, MM, testified the 10 Day Notice was served on the tenants by registered mail on April 20, 2022, and provided a tracking number, as noted on the cover page of the decision. Tenant DL testified that the landlord handed her the 10 Day Notice on an unknown date.

The landlord testified that each month he receives a cheque directly from the government for \$750.00 of the tenants' rent, and that some months the tenants pay him additional rent in cash, and some months they do not.

The landlord testified that the tenants first got behind on rent in August 2021, and owe outstanding rent as follows:

| Month | Rent | Total rent paid | Monthly outstanding | Cumulative total |
|----------------|-------------|------------------------|----------------------------|-------------------------|
| August 2021 | \$1,500.00 | \$850.00 | \$650.00 | \$650.00 |
| September 2021 | \$1,500.00 | \$1,000.00 | \$500.00 | \$1,150.00 |
| October 2021 | \$1,500.00 | \$750.00 | \$750.00 | \$1,900.00 |
| November 2021 | \$1,500.00 | \$1,100.00 | \$400.00 | \$2,300.00 |
| December 2021 | \$1,500.00 | \$1,300.00 | \$200.00 | \$2,500.00 |
| January 2022 | \$1,500.00 | \$1,250.00 | \$250.00 | \$2,750.00 |
| February 2022 | \$1,500.00 | \$1,150.00 | \$350.00 | \$3,100.00 |
| March 2022 | \$1,500.00 | \$1,010.00 | \$490.00 | \$3,590.00 |
| April 2022 | \$1,500.00 | \$1,210.00 | \$290.00 | \$3,880.00 |
| May 2022 | \$1,500.00 | \$750.00 | \$750.00 | \$4,630.00 |
| June 2022 | \$1,500.00 | \$930.00 | \$570.00 | \$5,200.00 |
| July 2022 | \$1,500.00 | \$750.00 | \$750.00 | \$5,950.00 |
| August 2022 | \$1,500.00 | \$750.00 | \$750.00 | \$6,700.00 |

The cumulative total amounts in the table above are calculated based on the landlord's testimony on rent payments.

The landlord submitted as evidence records of rent owing and payments made, indicating that rent is \$1,500.00, due on the first of the month. The statement shows arrears for August 2021 to August 2022, and supports the landlord's testimony on rent paid and owing.

The landlord also submitted as evidence several handwritten pages documenting the rent payments received from August 2021 to April 2022, including the amount of cash received and the date(s) it was paid.

Also submitted as evidence are four rent receipts, for April to July, 2022.

The landlord testified that on many occasions, the tenant would say that if they could get the rent reduced to \$1,300.00, they would be able to pay it. The landlord testified that many months the tenants did not pay even \$1,300.00 in rent.

The tenant testified that the landlord had agreed to the tenants paying \$1,300.00 a month. Later in the hearing, the tenant testified that rent was a different amount, stating that she had reached a verbal agreement with the landlord in the second month of the tenancy, March 2021, that rent would be \$1,400.00. The tenant testified she always asked the landlord for rent receipts, but he refused to provide them, except one time.

The tenant testified that their witness, KM, visits every day to assist the tenants due to their ages, has been present every time the tenant gave the landlord cash, and heard the parties agreeing that rent would be \$1,400.00.

Witness KM confirmed that the tenant would pay rent in cash, and each time request a receipt, which the landlord would not provide. KM testified that last week the tenant was given photocopies of 4 or 5 receipts.

Regarding the amount of monthly rent paid by the tenant to the landlord, KM first testified: "I believe she would pay him \$1,400.00 a month"; this choice of words gave me the impression that KM was not certain about the rent amount. Later in the hearing, KM spoke with greater certainty, testifying that: "she paid \$1,400.00 a month." KM also later testified that she heard the March 2021 discussion between the tenant and the landlord in which they agreed that rent would be adjusted to \$1,400.00, to accommodate an unexpected decrease in tenant AH's income, and because the tenants were not given the apartment they were supposed to move into.

The landlord testified that he never agreed the tenants could pay \$1,400.00, and if he had, he would have drawn up a new tenancy agreement. The landlord submitted that he keeps tenancy agreements current as they are used during lender appraisals, when the landlord is refinancing.

The tenant testified that for August 2021, in addition to the \$750.00 paid by the government to the landlord, the tenants paid \$750.00, for a total rent payment of \$1,500.00.

When I asked the tenant how much they paid for September 2021, in addition to the \$750.00 paid directly, she said she gave the landlord \$680.00; then corrected herself, stating she gave him \$600.00; then said the amount she gave him was \$650.00.

The tenant testified they paid rent as follows:

| Month | Rent paid directly | Rent paid by tenants | Total rent paid |
|----------------|---------------------------|-----------------------------|------------------------|
| August 2021 | \$750.00 | \$750.00 | \$1,500.00 |
| September 2021 | \$750.00 | \$650.00 | \$1,400.00 |
| October 2021 | \$750.00 | \$650.00 | \$1,400.00 |
| November 2021 | \$750.00 | \$650.00 | \$1,400.00 |
| December 2021 | \$750.00 | \$650.00 | \$1,400.00 |
| January 2022 | \$750.00 | \$650.00 | \$1,400.00 |
| February 2022 | \$750.00 | \$650.00 | \$1,400.00 |
| March 2022 | \$750.00 | \$650.00 | \$1,400.00 |
| April 2022 | \$750.00 | \$650.00 | \$1,400.00 |
| May 2022 | \$750.00 | \$650.00 | \$1,400.00 |
| June 2022 | \$750.00 | \$650.00 | \$1,400.00 |
| July 2022 | \$750.00 | \$650.00 | \$1,400.00 |
| August 2022 | \$750.00 | \$650.00 | \$1,400.00 |

Tenant DL testified that the landlord had already cashed the next month's government rent cheque, though it was several days prior to the 1st of the month.

The tenants' advocate, SM, submitted that if the landlord had not agreed to a reduced rent of \$1,400.00, he could have given the tenants a 10 Day Notice well over a year ago, but he didn't. SM submitted that the landlord's actions support the testimony of tenant DL and her witness.

The tenant submitted of the landlord: "He agreed with what I gave him for the last year, so I don't know why he's doing what he's doing."

The landlord testified he did serve the tenants with a 10 Day Notice on August 19, 2021, but did not "register it" with the Residential Tenancy Branch.

Advocate SM requested that if I find in the landlord's favour, that the order of possession be for later in the next month, as the landlord has already cashed the government's rent cheque for the next month, and the tenants are both elderly and disabled.

Analysis

Based on the affirmed testimony of landlord's witness MM, and having checked the tracking number, I find the 10 Day Notice was served on the tenants by registered mail on April 20, 2022, in accordance with section 88 of the Act, and deem it received by the tenants on April 25, 2022, in accordance with section 90 of the Act.

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

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

In this case, the onus is on the landlord to prove, on a balance of probabilities, that the tenants have not paid rent as required by the tenancy agreement and the Act.

The landlord has provided consistent affirmed testimony that rent was \$1,500.00 throughout the tenancy, that the tenants first got behind with their rent in August 2021, and has provided documentary evidence in support, which details the tenants' rent payments.

Tenant DL's testimony has contained multiple inconsistencies. She testified that in March 2021, the second month of the tenancy, she and the landlord agreed rent would be \$1,400.00 a month. If that were the case, why would the tenants have paid \$1,500.00 a month for March through July 2021, as suggested by the landlord's testimony and documentation that the tenants did not get behind on rent until August 2021? DL herself testified that in August 2021 the tenants paid \$1,500.00 in rent. Another inconsistency arose when I asked DL how much the tenants paid in cash for September 2021 and she named two different amounts before settling on a third. Tenant DL has also testified that the landlord agreed the tenants could pay \$1,300.00, which conflicts with her testimony that the parties had agreed rent was \$1,400.00.

I acknowledge that the landlord's failure to provide rent receipts in accordance with the Act and the tenancy agreement seriously hampered the tenants' ability to demonstrate the amount they paid in cash for rent. I also find that though one of the tenant's statements on how much rent was during the tenancy, \$1,400.00, is supported by a witness, that witness initially sounded unsure about rent being \$1,400.00. Overall, I find the inconsistencies in the testimony for the tenant's side to be insurmountable.

Considering the foregoing, I favour the landlord's affirmed and consistent testimony and documentary evidence on unpaid rent over that of the tenant's, and find, on a balance of probabilities, that the landlord has proven that the tenants have not paid rent as required by the tenancy agreement and the Act. I dismiss the tenants' application for an order cancelling the 10 Day Notice, and uphold the landlord's Notice.

Therefore, in accordance with section 55 of the Act, the landlord is entitled to an order of possession and outstanding rent in the amount of \$6,700.00.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the landlord is successful in their application, I order the tenants to pay the \$100.00 filing fee the landlord paid to apply for dispute resolution.

In accordance with section 72 of the Act, I allow the landlord to retain the tenants' \$750.00 security deposit in partial satisfaction of the amount owing.

I find the landlord is entitled to a monetary order as follows:

| | |
|-------------------------|-------------------|
| Outstanding rent | \$6,700.00 |
| Filing fee | \$100.00 |
| Security deposit | -\$750.00 |
| Owed to Landlord | \$6,050.00 |

As the landlord failed to provide rent receipts for rent paid in cash as required by section 26 of the Act and the tenancy agreement, thereby making it much more difficult for the tenants to demonstrate the amount of rent paid during the tenancy, I grant the landlord an order of possession for 1:00 p.m. on September 30, 2022, rather than the two-day order customary with a finding of unpaid rent.

The tenants must pay the September rent of \$1,500.00 in full in accordance with the Act and the tenancy agreement.

Conclusion

The tenants' application is dismissed.

The landlord is granted an order of possession which will be effective September 30, 2022 at 1:00 p.m.

The landlord is granted a monetary order for \$6,050.00.

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: September 20, 2022

Residential Tenancy Branch