



DECISION

Introduction

This hearing dealt with the Tenant Application for Dispute Resolution (Application) pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to sections 46 and 55.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

In this case, neither party provided me with a copy of the 10 Day Notice., although it was the tenant's responsibility to provide a copy with their application.

At the hearing the parties were given the opportunity to inform me of the form and contents of the 10 Day Notice. There was no dispute on the contents of the 10 Day Notice.. However, I requested the landlord to provide a copy of the 10 Day Notice after the hearing to ensure compliance with Section 52 of the Act and to verify the parties testimony.

Background and Evidence

Rent in the amount of \$1,640.00 was payable on the first of each month. A security deposit of \$800.00 and a pet damage deposit of \$200.00 was paid by the tenant

The tenant submits the following details in their application

I AM RETURNING TO WORK VERY SOON, I DON'T WANT TO BE OUT ON THE STREET. I PLAN ON PAYING UNPAID RENT AND CONTINUE MY TENANCY.

The tenant testified that they received the Notice on April 25, 2022. The tenant stated that they agree they owed unpaid rent in the amount of \$13,170.00 at the time the 10 Day Notice t was issued and did not pay. The tenant confirmed that they have not paid any subsequent rent.

The tenant testified that they were hopeful they could workout a repayment plan with the landlord as they are hopeful to be going back to work in three months time.

The landlord indicated they are not prepared to enter into a repayment plan and continue the tenancy as there is no guarantee.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

...

How to end a tenancy is defined in Part 4 of the Act.

Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2) A notice under this section must comply with section 52 [form and content of notice to end tenancy].

...

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

Upon review of the Notice, I find the Notice is completed in accordance with the requirements of section 52 of the Act.

Under the legislation the tenant may dispute the Notice for specific reasons, such as they have proof that their rent was paid or that the tenant had the right under the Act to deduct all or a portion from their rent, such as an order from an Arbitrator.

In this case, the tenant acknowledge the rent indicated in the 10 Day Notice was owed and did not pay the outstanding rent within 5 days. While I accept the tenant may have personal health issues; however, rent is still required to be paid under the Act on the day it is due. I find the tenant breached section 26 of the Act when they failed to pay rent. I find the 10 Day Notice is valid and remains in full force and effect.

Further, I have no authority under the Act to allow the tenant to remain in the rental without paying rent. This would be highly prejudicial and unfair to the landlord. Therefore, I dismiss the tenant's application without leave to reapply.

Order of possession for the landlord

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.

As I have dismissed the tenant's application, I find I must grant the landlord an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the

tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

As the tenant admitted they did not pay the outstanding rent of **\$13,170.00** indicated in the 10 Day Notice and has admitted to not paying any subsequent rent for an additional five months (**\$8,200.00**). I find I must grant the landlord a monetary order for the unpaid rent in the total amount of **\$21,370.00**. This order may be filed in the Provincial Court and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Should this amount remain unpaid at the end of the tenancy. I authorize the landlord to retain the security deposit of \$800.00 and the pet damage deposit of \$200.00 to offset the above award.

Conclusion

The tenant failed to pay rent. The tenant's application to cancel the 10 Day Notice is dismissed. The landlord is granted an order of possession and a monetary order for the unpaid rent pursuant to section 55 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 16, 2022

Residential Tenancy Branch