



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RP, OPR, MNR, MNSD, FF

Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application is seeking orders as follows:

1. For an order of possession for unpaid rent based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") issued on August 3, 2022; and
2. For a monetary order for unpaid rent;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice"), received on July 6, 2022
2. To suspend or set conditions on the landlord's right to enter the rental unit; and
3. To have the landlord make repairs to the rental unit.

Landlord's application

Only the landlord and the landlord's agent appeared (the "landlord"). As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on October 7, 2022. The landlord provided the Canada Post tracking number. The landlord stated that the package was returned unclaimed by the tenant. I have noted the tracking number on the covering page of this Decision.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenant has been duly served in accordance with the Act. Refusal or neglect to pickup the package does not override the deemed service provisions of the Act.

Tenant's application

The tenant did not appear, although the tenant confirmed with the Residential Tenancy Branch on November 9, 2022, that the hearing was still required. The tenant was also sent a reminder notification of today's hearing on November 25, 2022.

As the tenant did not appear. I dismiss the tenant's application without leave to reapply.

Preliminary Issues

Neither party provided me a copy of the Notice or the 10 Day Notice as required by the Residential Tenancy Branch Rules of Procedure. The landlord uploaded the wrong notice to end tenancy as it is a subsequent notice to end tenancy issued in September 2022, and not related to 10 Day Notice listed in their application.

I have allowed the landlord to submit a copy of the 10 Day Notice after the hearing. I do not find this prejudicial to the tenant as the tenant contacted the Residential Tenancy Branch on August 5, 2022, regarding being served with the 10 Day Notice.

Issues to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent and late fees?

Is the landlord entitled to retain the security deposit?

Background and Evidence

The tenancy began in August 2019. Current rent in the amount of \$938.58 was payable on the first of each month. A security deposit of \$450.00 was paid by the tenant.

The landlord testified that they served the tenant with the 10 Day Notice on August 3, 2022, by posting to the door of the rental unit and witnesses. Filed in evidence is a copy of the Proof of Service. Filed in evidence is a copy of the 10 Day Notice.

I note in the communication tab of tenant's digital file it shows the tenant contacted the Residential Tenancy Branch on August 5, 2022, which confirmed they had received the 10 Day Notice, and was informed how to amend their application, if they chose to dispute the 10 Day Notice, which no amendment was filed by the tenant.

The landlord testified that the tenant did not pay rent for August 2022, and has failed to pay subsequent rent for September, October and November 2022. The landlord seeks to recover unpaid rent in the amount of \$3,754.32.

The landlord testified that they are also seeking the late fees for the above months at the allowable amount of \$25.00 as it is in the tenancy agreement. The landlord seeks to recover \$100.00.

Analysis

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

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

I accept the landlord's testimony that the tenant was served with the 10 Day Notice by posting to the door of the rental unit on August 3, 2022. This is supported by the witness who signed the proof of service and the tenant's own communication with the Residential Tenancy Branch on August 5, 2022.

The tenant did not pay the outstanding rent within 5 days of receiving the 10 Day Notice. Nor did the tenant amend their application to dispute the 10 Day Notice. I find

the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the 10 Day Notice, which was August 31, 2022. I find the tenancy legally ended on August 31, 2022.

I find the tenant is overholding the rental unit. Therefore, I find that the landlord is entitled to 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 has not paid rent for August, September, October and November 2022, I find I must grant the landlord a monetary order for the unpaid rent pursuant to section 55(1.1) of the Act in the total amount of **\$3,754.32**.

As the landlord's application is seeking recovery of late fees, I find it reasonable to include the late fees that have incurred since filing their application. As the tenant has not paid rent for the above months the rent is considered late. I find the landlord is entitled to recover the cost of **\$100.00**.

I find that the landlord has established a total monetary claim of **\$3,954.32** comprised of the above described amount and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$450.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$3,504.32**.

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

Conclusion

The tenant's application is dismissed without leave to reapply.

The landlord is granted an order of possession. The landlord is granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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: November 28, 2022

Residential Tenancy Branch