



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, FFT

Introduction

This hearing dealt with the Tenants' application under the *Residential Tenancy Act* (the "Act") for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent dated August 10, 2022 (the "10 Day Notice") pursuant to section 46;
- an order that the Landlord comply with the Act, the regulations, or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the Landlord pursuant to section 72.

The Landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The Tenants did not attend this hearing. I left the teleconference hearing connection unlocked until 9:40 am in order to enable the Tenants to call into the hearing scheduled to start at 9:30 am. I confirmed that the correct call-in numbers and participant access code had been provided in the notice of dispute resolution proceeding. I used the teleconference system to confirm that the Landlord and I were the only ones who had called into the hearing.

I informed the Landlord that the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Correction of Landlord's Name and Dispute Address

The Landlord testified that her name on the application is incorrect. The Landlord confirmed the correct spelling of her name. The Landlord also testified that the rental

unit is the upper floor of a house, which includes two bedrooms, a kitchen, and a bathroom. Based on the Landlord's testimony and pursuant to section 64(3)(c) of the Act, I have amended the style of cause and the dispute address on this application accordingly.

Preliminary Matter – Service of Dispute Resolution Documents

The Landlord confirmed receipt of the Tenants' notice of dispute resolution proceeding package (the "NDRP Package"). I find the Landlord was served with the NDRP Package in accordance with section 89(1) of the Act. The Landlord acknowledged she was unable to serve the Tenants with her evidence. As such, aside from copies of the 10 Day Notice which have been submitted into evidence by both the Landlord and the Tenants, I exclude the other documentary evidence from consideration for the purpose of this hearing.

Preliminary Matter – Tenancy Has Ended

The Landlord testified the Tenants vacated the rental unit on August 28, 2022. I find it is therefore not necessary for me to consider whether the Landlord is entitled to an Order of Possession under section 55(1) of the Act.

Preliminary Matter – Tenants' Non-attendance

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party or dismiss the application with or without leave to re-apply.

As the Tenants did not attend this hearing for their own application while the Landlord duly attended, and in the absence of any submissions or substantive evidence, I order the Tenants' claims for the Landlord to comply with the Act, the regulations, or tenancy agreement and for recovery of the filing fee to be dismissed without leave to re-apply.

I directed the hearing to continue in the Tenants' absence to determine whether the Tenants are entitled to cancel the 10 Day Notice, and if not, whether the Landlord is entitled to a Monetary Order for unpaid rent under section 55(1.1) of the Act.

Issues to be Decided

1. Are the Tenants entitled to cancel the 10 Day Notice?
2. Is the Landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

This tenancy was a fixed term sublease commencing on June 1, 2022 and ending on August 28, 2022. Rent was \$1,200.00 (\$600.00 per person) due on the first day of each month. The Landlord confirmed that the parties had agreed rent would not be prorated for the month of August 2022. The Landlord testified that the Tenants paid a security deposit of \$150.00 each, for a total of \$300.00. The Landlord testified the Tenants had submitted application forms, but there was otherwise no written sublease agreement between the parties.

Copies of the 10 Day Notice submitted into evidence show that it signed by the Landlord and has an effective date of August 20, 2022. It states the Tenants failed to pay rent of \$600.00 due on August 1, 2022 and utilities of \$85.00 following written demand on August 10, 2022. The Tenants' application indicates the Tenants received the 10 Day Notice via email on August 10, 2022.

The Landlord explained the Tenants had failed to pay rent of \$600.00 each for a total of \$1,200.00 due on August 1, 2022. The Landlord testified that this amount is still outstanding from the Tenants.

The Landlord further explained that her landlord had asked her to recover costs for excessive utilities consumed by the Tenants during their stay. The Landlord acknowledged the parties had agreed that the utilities would be included in the Tenants' rent. The Landlord confirmed she was not seeking to recover the amount for utilities stated on the 10 Day Notice. The Landlord testified that the Tenants' \$300.00 deposit had not been returned to the Tenants.

The Landlord testified the Tenants refused to leave the rental unit at the end of the sublease and had to be removed from the property on August 28, 2022. The Landlord confirmed she moved back into the rental unit at the end of the sublease.

Analysis

1. Are the Tenants entitled to cancel the 10 Day Notice?

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

If a tenant does not pay rent when due, section 46 of the Act permits a landlord to take steps to end a tenancy by issuing a notice to end tenancy for unpaid rent.

Section 46(2) of the Act requires that a 10 day notice to end tenancy must comply with section 52 of the Act, which states:

Form and content of notice to end tenancy

- 52 In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
 - (b) give the address of the rental unit,
 - (c) state the effective date of the notice,
 - (d) except for a notice under section 45(1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
 - (e) when given by a landlord, be in the approved form.

In this case, I have reviewed the 10 Day Notice and I find that it complies with the requirements of section 52 in form and content. I accept the Landlord's explanations regarding the stated amounts for unpaid rent and utilities. I do not find these stated amounts to affect the validity of the 10 Day Notice under section 52 of the Act.

Based on the Tenants' application which acknowledges receipt of the 10 Day Notice on August 10, 2022, I find the Tenants were served with the 10 Day Notice on August 10, 2022 in accordance with section 88(j) of the Act.

Section 46(4)(b) of the Act permits a tenant to pay the overdue rent or make an application to dispute a 10 day notice to end tenancy within 5 days of receiving such notice. In this case, the Tenants had until August 15, 2022 to pay the overdue rent or

dispute the 10 Day Notice. Records of the Residential Tenancy Branch indicate that the Tenants' application was submitted on August 14, 2022. I find the Tenants' application was made within the 5-day deadline stipulated under section 46(4)(b) of the Act.

Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, Rule 6.6 of the Rules of Procedure places the onus on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Although an application was made, the Tenants did not attend this hearing to give their submissions. I accept the Landlord's undisputed testimony under oath that the Tenants owe unpaid rent of \$1,200.00 for the month of August 2022. I find there is no evidence to suggest that the Tenants had a legal right under the Act to withhold payment of rent to the Landlord.

Based on the foregoing, I find that the Landlord has established grounds for ending this tenancy under the 10 Day Notice. Accordingly, I dismiss the Tenants' claim to dispute the 10 Day Notice without leave to re-apply.

2. Is the Landlord entitled to a Monetary Order for unpaid rent?

Pursuant to section 55(1.1) of the Act, the director must grant an order requiring the payment of unpaid rent when the notice to end tenancy complies with section 52 of the Act and the tenant's application to dispute the notice is dismissed.

Based on the Landlord's undisputed evidence, I find the Landlord is entitled to recover \$1,200.00 in unpaid rent from the Tenants under section 55(1.1) of the Act.

Pursuant to section 72(2)(b) of the Act, I authorize the Landlord to retain the Tenants' \$300.00 security deposit in partial satisfaction of the amount awarded in this application.

The Monetary Order granted to the Landlord for the balance is calculated as follows:

Item	Amount
Unpaid August 2022 Rent	\$1,200.00
Less Security Deposit	- \$300.00
Total Monetary Order for Landlord	\$900.00

Conclusion

The Tenants' application is dismissed in its entirety without leave to re-apply.

The Landlord is entitled to recover \$1,200.00 in unpaid rent from the Tenants. Pursuant to section 72(2)(b) of the Act, the Landlord is authorized to retain the Tenants' \$300.00 security deposit in partial satisfaction of the total amount owing.

Pursuant to section 55(1.1) of the Act, I grant the Landlord a Monetary Order in the amount of **\$900.00** for the balance. The Tenants must be served with this Order as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 22, 2022

Residential Tenancy Branch