



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT

Introduction

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

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent dated October 2, 2022 (the "10 Day Notice") pursuant to section 46; and
- authorization to recover the filing fee for this application from the Landlord pursuant to section 72.

The Landlord's agent SL attended this hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The Tenant did not attend this hearing. I left the teleconference hearing connection open until 11:20 am in order to enable the Tenant to call into the hearing scheduled to start at 11:00 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 SL and I were the only ones who had called into the hearing.

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

Preliminary Matter – Service of Dispute Resolution Documents

SL testified that the Landlord did not receive any dispute resolution documents from the Tenant. Records from the Residential Tenancy Branch (the "RTB") indicate that the RTB emailed the Landlord a courtesy copy of the notice of dispute resolution proceeding package (the "NDRP Package") on October 31, 2022. As such, I find the

Landlord was sufficiently served with the NDRP Package pursuant to section 71(2) of the Act. SL indicated she was unable to serve the Tenant as he did not provide a forwarding address. Therefore, aside from copies of the 10 Day Notice which have been submitted into evidence by both the Landlord and the Tenant, I exclude the other documentary evidence from consideration for the purpose of this hearing.

Preliminary Matter – Tenancy Has Ended

SL testified that the Tenant vacated the rental unit without notice on October 16, 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 – Tenant's 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 Tenant did not attend this hearing for his own application while SL duly attended on behalf of the Landlord, I order the Tenant's claim for recovery of the filing fee to be dismissed without leave to re-apply.

I directed the hearing to continue in the Tenant's absence to determine whether the Tenant is 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. Is the Tenant entitled to cancel the 10 Day Notice?
2. Is the Landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

This tenancy commenced on September 1, 2021 and was month-to-month. Rent was \$1,000.00 per month due on the first day of each month. The parties did not have a written tenancy agreement.

SL testified that the Tenant had paid a security deposit of \$500.00 at the start of the tenancy. SL explained that the Tenant paid \$500.00 in rent for August 2022 and told the Landlord to apply the security deposit against the rest of the rent owing. SL testified the Landlord asked the Tenant to replenish his security deposit in September 2022, since the Tenant was still living in the rental unit. SL testified the Tenant then paid \$500.00 for his security deposit, but not the rent for September or October 2022.

Copies of the 10 Day Notice submitted into evidence show that it signed by the Landlord and has an effective date of October 12, 2022. It states the Tenant failed to pay rent of \$1,000.00 due on October 1, 2022. The Tenant's application indicates that he received a copy of the 10 Day Notice posted to his door on October 3, 2022.

SL explained that the Landlord did not issue a 10 day notice for unpaid rent in September 2022 because the parties had been talking about making September a rent-free month for the Tenant. SL explained that the Landlord had issued a two month notice to end tenancy for landlord's use to the Tenant on September 21, 2022 (the "Two Month Notice"), with an effective date of November 30, 2022. SL testified that the parties were in discussions about the Tenant potentially moving out at the end of September 2022, so that September would be given to the Tenant rent-free.

SL testified the Tenant did not move out by the end of September 2022 and did not pay rent on October 1, 2022, which is why the Landlord issued the 10 Day Notice.

SL confirmed the Tenant did not provide any notice to the Landlord that he would be vacating the rental unit in October 2022 rather than on November 30, 2022, the effective date of the Two Month Notice.

SL confirmed the Tenant moved out of the rental unit on October 16, 2022 and did not provide a forwarding address. SL stated the Tenant did not dispute the Two Month Notice.

Analysis

1. Is the Tenant 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.

Based on the Tenant's application which acknowledges receipt of the 10 Day Notice posted to the Tenant's door on October 3, 2022, I find the Tenant was served with the 10 Day Notice on that date in accordance with section 88(g) 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 Tenant had until October 8, 2022 to pay the overdue rent or dispute the 10 Day Notice. Records of the Residential Tenancy Branch indicate that the

Tenant's application was submitted on October 7, 2022. I find this application was made within the 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.

Based on SL's undisputed testimony, I find the Landlord issued the Two Month Notice to the Tenant on September 21, 2022, with an effective date of November 30, 2022.

Section 50 of the Act states:

Tenant may end tenancy early following notice under certain sections

50(1) If a landlord gives a tenant notice to end a periodic tenancy under section 49 [landlord's use of property] or 49.1 [landlord's notice: tenant ceases to qualify] or the tenant receives a director's order ending a periodic tenancy under section 49.2 [director's orders: renovations or repairs], the tenant may end the tenancy early by

(a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice or director's order, and

(b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice,

unless subsection (2) applies.

(2) If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.

(3) A notice under this section does not affect the tenant's right to compensation under section 51 [tenant's compensation: section 49 notice].

(emphasis added)

I accept SL's undisputed testimony that the Tenant vacated the rental unit on October 16, 2022 without notice to the Landlord. I find the Tenant did not provide the Landlord with at least 10 days' written notice as required under section 50(1) of the Act before vacating. I also find the Tenant did not pay for the proportion of the rent due for the period from October 1 to 16, 2022. Therefore, I find this tenancy was ended prematurely on October 16, 2022 without notice pursuant to section 44(1)(d) of the Act, that is, due

to the Tenant vacating or abandoning the rental unit, rather than under section 44(1)(a)(v) of the Act and pursuant to the Two Month Notice.

In addition, I accept SL's undisputed testimony that the Tenant ultimately did not pay any rent for the months of September or October 2022. As I have determined that the tenancy ended prematurely and not pursuant to the Two Month Notice, I find the Tenant is not entitled to compensation of one month's rent under section 51(1) of the Act. Based on the evidence before me, I do not find the Tenant had a legal right under the section 51(1) or another section of the Act to withhold payment of September and October 2022 rent.

I conclude the Landlord has established the grounds for ending the tenancy stated in the 10 Day Notice. The Tenant's claim to dispute the 10 Day Notice is dismissed 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.

I find the Landlord is entitled to recover \$2,000.00 in unpaid rent from the Tenant for the months of September and October 2022 under section 55(1.1) of the Act.

Pursuant to section 72(2)(b) of the Act, I authorize the Landlord to retain the Tenant's \$500.00 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 September 2022 Rent	\$1,000.00
Unpaid October 2022 Rent	\$1,000.00
Less Security Deposit	- \$500.00
Total Monetary Order for Landlord	\$1,500.00

Conclusion

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

The Landlord is entitled to recover \$2,000.00 in unpaid rent from the Tenant. Pursuant to section 72(2)(b) of the Act, the Landlord is authorized to retain the Tenant's \$500.00 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 **\$1,500.00** for the balance. This Order may be served on the Tenant, 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 25, 2022

Residential Tenancy Branch