



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR-MT, DRI, RR, LRE, OLC

Introduction

This hearing was scheduled to hear a tenant's application to:

- cancel a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice"),
- to dispute a rent increase,
- authorization to reduce rent payable,
- have the landlord's right to enter the rental unit restricted, and
- have orders for the landlord to comply with the Act, regulations or tenancy agreement.

The landlord appeared at the hearing and was affirmed; however, there was no appearance on part of the tenants despite leaving the teleconference call open approximately 20 minutes. The landlord also had a home inspector appear at the commencement of the hearing. The home inspector was excused with instructions to wait to be called.

The landlord stated she was notified of the tenant's Application for Dispute Resolution by way of email; however, the landlord had not authorized the tenants to serve her by email. Nevertheless, the landlord stated she wished to proceed with this matter and I deemed the landlord sufficiently served pursuant to the authority afforded me under section 71 of the Act.

Since the tenants failed to appear for their hearing, and the landlord did appear and was prepared to proceed, I dismissed the tenant's Application for Dispute Resolution without leave to reapply.

Section 55(1) and (1.1) of the Act provides that:

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

[My emphasis underlined]

Since the tenants had filed to dispute a 10 Day Notice, section 55(1) and (1.1) may apply and I explored this further with the landlord.

The landlord informed me that the tenants have vacated the rental unit and the landlords confirmed the landlords have regained possession of the rental unit. As such, I find the landlords do not require an Order of Possession and I do not provide one with this decision. The landlord requested a Monetary Order for unpaid rent. Accordingly, I proceeded to consider whether the landlords are entitled to a Monetary Order for unpaid rent.

Issue(s) to be Decided

Are the landlords entitled to a Monetary Order or unpaid rent?

Background and Evidence

The landlord testified that the tenancy started on May 21, 2022. The landlords collected a security deposit of \$750.00 and \$650.00 toward a pet damage deposit. The monthly rent was set at \$1500.00 due on the 21st day of every month.

The landlords served the tenants with a 10 Day Notice for rent that was not paid on July 21, 2022, which the tenants disputed by way of this Application for Dispute Resolution.

The landlord testified that the tenants never did pay any of the rent that was due on July 21, 2022.

The landlords issued another 10 Day Notice when rent was not paid for August 21, 2022.

On September 8, 2022 the landlords received \$682.00 from the government on behalf of the tenants. On September 21, 2022 the landlords received a further \$750.00 from the government on behalf of the tenants.

On September 30, 2022 the landlords refunded \$1400.00 in deposits to the tenants and the tenants proceeded to vacate the rental unit on or about October 1, 2022.

The landlord seeks to recover unpaid rent for the period of July 21, 2022 through September 30, 2022.

Analysis

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right to withhold rent.

I accept the unopposed evidence before me that the tenants were required to pay rent of \$1500.00 on the 21st day of every month and the tenants has failed to do so for the month of July 2022 onwards. I was not presented any evidence to suggest the tenants had a lawful right under the Act to withhold rent that was due to the landlords.

I also accept the unopposed evidence before me the tenants remained in possession of the rental unit between July 21, 2022 until at least September 30, 2022 and the landlords only received two partial payments toward rent in the amounts of \$682.00 and \$750.00. Accordingly, I find the landlords entitled to recover unpaid rent from the tenants, calculated as follows:

Unpaid rent for July 21, 2022	\$1500.00
Unpaid rent for August 21, 2022	1500.00
Pro-rated rent for September 21 – 30, 2022	500.00
Less: payments received (\$682.00 + \$750.00)	<u>(1432.00)</u>
Monetary Order for unpaid rent	\$2068.00

Pursuant to section 55(1.1), I provide the landlords with a Monetary Order for unpaid rent in the net sum of \$2068.00.

As the landlords have already refunded the security deposit and pet damage deposits to the tenants, I do not deduct the deposits from the above calculation.

Conclusion

The tenants Application for Dispute Resolution is dismissed without leave to reapply.

The landlords are provided a Monetary Order for unpaid rent, as provided under section 55(1.1) of the Act, in the amount of \$2068.00.

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: December 29, 2022

Residential Tenancy Branch