



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR MNDCT RR RP OLC FFT**

Introduction

This hearing was convened as a result of the Tenants' application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act") for:

- cancellation of a Ten Day Notice to End Tenancy for Unpaid Rent and/or Utilities dated July 2, 2022 ("10 Day Notice"), pursuant to section 46;
- an order to seek a monetary order for compensation from the Landlord pursuant to section 67;
- an order to allow the Tenants to reduce rent for repairs, services or facilities agreed upon but not provided by the Landlord pursuant to section 65;
- an order requiring the Landlord to complete repairs to the rental unit pursuant to section 32;
- an order for the Landlord to comply with the Act, *Residential Tenancy Regulations* ("Regulations") and/or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for the Application from the Landlord pursuant to section 72.

The Tenants did not attend this hearing scheduled for 9:30 am. I left the teleconference hearing connection open for the entire hearing, which ended at 10:05 am, in order to enable the Tenants to call into this teleconference hearing. 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. I confirmed that the correct call-in numbers and participant codes were provided in the Notice of Dispute Resolution Proceeding ("NDRP"). I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference.

The Landlord stated the Tenants did not serve her with the NDRP. The Landlord stated she received a courtesy copy of the NDRP from the Residential Tenancy Branch ("RTB"). I find the Landlord was sufficiently served with the NDRP pursuant to section 71(2)(b) of the Act.

The Landlord stated she served her evidence on the Tenants by registered mail on September 12, 2022. The Landlord provided the Canada Post tracking number to corroborate her testimony that she served her evidence on the Tenants. I find the Landlord's evidence was served on the Tenants in accordance with the provisions of section 88 of the Act. Pursuant to section 90, I find the Tenants were deemed to have received the Landlord's evidence on September 17, 2022, being five days after posting it in the mail by the Landlord.

Preliminary Matter – Effect of Non-Attended by Tenants at Hearing

Rules 7.1, 7.3 and 7.4 of the *Residential Tenancy Branch Rules of Procedure* state:

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

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 the party, or dismiss the application, with or without leave to re-apply.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Given the Tenants did not attend the hearing before the hearing ended at 10:05 am, being more than 10 minutes after of its commencement, the Application is dismissed without leave to reapply. As the Tenants were not present at the hearing, I will not consider any of the evidence submitted by the Tenants in advance of the hearing when adjudicating the Application.

Issues to be Decided

Is the Landlord entitled to:

- an Order of Possession for non-payment of rent pursuant to section 55(1) of the Act?
- a monetary order for rental arrears owing by the Tenants pursuant to section 55(1.1) of the Act?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

The Landlord submitted into evidence a signed copy of the tenancy agreement ("Tenancy Agreement") dated March 21, 2022. The Tenancy Agreement states the tenancy commenced on April 1, 2022, with rent of \$1,800.00 payable on the 1st day of each month. The Tenants were required to pay a security deposit of \$900.00. The Landlord acknowledged the Tenants paid the security deposit and that she was holding it in trust for the Tenants. Based on the undisputed testimony of the Landlord, I find there was a tenancy between the Landlord and Tenants and that I have jurisdiction to hear the Application.

The Landlord stated the Tenants abandoned the rental unit. The Landlord stated the Tenants sent her a text message on July 31, 2021 at 10:11 am to advise they had moved out of the rental unit on the previous Tuesday. The Tenants also advised in the text message that the key for the door was under the mat and an additional key was left hanging up by the stove. The text also stated the old lock was in the cupboard above the fridge and the set of keys for the old lock would be coming in the mail. The Landlord confirmed she took possession of the rental unit on July 31, 2022.

The Landlord submitted into evidence a copy of the 10 Day Notice and stated she served it on the Tenants by registered mail on July 5, 2022. The Landlord submitted the Canada Post tracking number to corroborate her testimony on service of the 1 Month

Notice on the Tenants. The Landlord stated she previously served the Tenants with a One Month Notice for Cause ("1 Month Notice") and the Tenants made an application for dispute resolution ("Previous Application") to dispute the 1 Month Notice. The Landlord stated the arbitrator who heard the Previous Application dismissed it and ordered the Tenants to deduct the \$100 filing fee from the next months' rent. The 10 Day Notice stated the Tenants had rental arrears of \$1,700.00 as of July 1, 2022 after crediting the Tenants for the \$100.00 for the filing fee of the Previous Application. The Landlord claimed the Tenants owed her rental arrears of \$3,500.00, calculated as follows:

Date	Rent Owed	Paid	Balance
01-Jul-22	\$1,800.00		\$1,800.00
01-Jul-22		\$100.00	\$1,700.0
01-Aug-22	\$1,800.00		\$3,500.00
Total	\$3,600.00	\$100.00	\$3,500.00

Analysis

1. Order of Possession

Sections 46(1) through 46(5) of the Act state:

- 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*].
- (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.
- (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.
- (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

- (a) *is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and*
- (b) *must vacate the rental unit to which the notice relates*

[emphasis in italics added]

The Landlord served the Tenants with the 10 Day Notice on July 5, 2022. Pursuant to section 90, the Tenants were deemed to have received the 10 Day Notice on July 10, 2022, being 5 days after posting in the mail. Pursuant to section 46(4) of the Act, the Tenants had 5 days, or July 15, 2022, within which to make an application for dispute resolution to dispute the 10 Day Notice. The records of the RTB disclose the Tenants made their application on July 6, 2022. Accordingly, the Tenants made the Application to dispute the 10 Day Notice within the five-day dispute period. However, as noted above, the Tenants did not attend this hearing and I have dismissed the Application.

The 10 Day Notice stated the Tenants had rental arrears of \$1,700.00 as of July 1, 2022. I accept the undisputed testimony of the Landlord in its entirety. I find the Tenants had rental arrears of \$1,700.00 as of July 1, 2022.

- 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.

As such, the Tenants were responsible for paying rent when it was due. Based on the foregoing, I find the 10 Day Notice was issued for a valid reason. Sections 55(1) and 55(1.1) of the Act state:

- 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.

Section 55(1) of the Act provides that, where a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with section 52 of the Act, then I must grant the landlord an Order of Possession. I have reviewed the 10 Day Notice and find it complies with the form and content requirements of section 52 of the Act. Pursuant to section 55(1) of the Act, the Landlord is entitled to an Order of Possession to the rental unit. As the Tenants vacated the rental unit on July 31, 2022, it is unnecessary for me to grant an Order of Possession to the Landlord.

2. Monetary Order for Rental Arrears

The Landlord also sought rent for August 2022. However, the Landlord served the Tenants with the 10 Day Notice with an effective date of July 14, 2022 and the Tenants vacated the rental unit during July 2022.

the Tenants had already vacated the rental unit by July 31, 2022. *Residential Tenancy Policy Guideline 3* ("PG 3") provides guidance on situations where a landlord seeks to hold a tenancy liable for loss of rent after the end of a tenancy. PG 3 states in part:

[...]

Compensation is to put the landlord in the same position as if the tenant had complied with the legislation and tenancy agreement. Compensation will generally include any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. It may also take into account the difference between what the landlord would have received from the defaulting tenant for rent and what they were able to re-rent the premises for during the balance of the term of the tenancy.

[...]

If instead of a fixed term tenancy, the example involved a month-to-month tenancy, the landlord who issued the notice to end tenancy for non-payment of rent could recover any loss of rent suffered for the next month. That is because a notice given by the tenant mid-month would not end the tenancy until the end of the subsequent month. If instead the month to month tenancy was ended for cause, the landlord could not claim for loss of rent for the subsequent month after the

notice is effective because a notice given by the tenant could have ended the tenancy at the same time.

[...]

In the present case, pursuant to section 55(1.1) of the Act, the Landlord is only entitled to rental arrears for the period the last month the Tenants were in possession of the rental unit, being July 2022. However, in certain cases, a tenant may be liable for compensate the landlord for other losses associated with the tenancy such as where the tenant vacates the rental unit but the landlord suffers loss of rental income as the landlord cannot immediately re-rent the rental unit. In those cases, the landlord has the option of making an application for dispute resolution to make a claim for compensation for loss of rental income.

Based on the foregoing, I find the Landlord is entitled to \$1,700.00 for the rental arrears owing for July 1, 2022. As such, pursuant to section 55(1.1) of the Act, I order the Tenants to pay \$1,700.00, representing unpaid rental arrears for July 2022. Pursuant to section 72(2) of the Act, the Landlord may retain the security deposit of \$900.00 in partial satisfaction of the Monetary Order made above.

Conclusion

The Application is dismissed in its entirety without leave to reapply.

Pursuant to section 55(1.1) of the Act, I order the Tenants pay the Landlord \$800.00 representing the following:

Description	Amount
Rental Arrears for July 2022	\$1,700.00
Less Tenant's Security Deposit	-\$900.00
Total	\$800.00

This Monetary Order must be served by the Landlord on the Tenants and may be enforced in Provincial 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: December 14, 2022

Residential Tenancy Branch