



Dispute Resolution Services

Page: 1

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 August 23, 2022 (the "10 Day Notice") pursuant to section 46; and
- authorization to recover the filing fee for this application from the Landlords pursuant to section 72.

The Landlords attended this hearing and were 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 2:00 pm in order to enable the Tenant to call into the hearing scheduled to start at 1:30 pm. 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 Landlords and I were the only ones who had called into the hearing.

Preliminary Matter – Addition of Landlord

This application initially listed one of the Landlords, CS, as the sole landlord and respondent. CS confirmed that JKM is her spouse and is also listed on the tenancy agreement as a landlord. I have reviewed a copy of the tenancy agreement submitted into evidence by the Tenant, and I find that JKM signed this agreement as a landlord. Accordingly, I have added JKM as a landlord and this respondent to this application pursuant to Rules 7.12 and 7.13 of the Rules of Procedure.

Preliminary Matter – Substituted Service Request

Prior to this hearing, CS had submitted a substituted service request to serve the Tenant with the Landlords' evidence via email. CS explained that the Tenant had moved out without providing a forwarding address. The Landlords confirmed that they emailed their documentary evidence to the Tenant (email address referenced on the cover page of this decision).

During the hearing, it was determined that it would not be necessary to refer to the Landlords' documentary evidence for this application. As such, I do not make any orders for substituted service at this time.

Preliminary Matter – Service of Dispute Resolution Documents

The Landlords acknowledged receipt of the Tenant's notice of dispute resolution proceeding package and documentary evidence (collectively, the "NDRP Package"). Pursuant to section 71(2) of the Act, I find the Landlords were sufficiently served with the NDRP Package.

Preliminary Matter – Tenancy Has Ended

The Landlords testified that the Tenant had vacated the rental unit without any notice and did not return the keys. The Landlords testified that when they did an inspection of the rental unit on September 3, 2022, the Tenant was still there at the time. The Landlords testified that they found the rental unit damaged and abandoned on October 9, 2022. The Landlords confirmed that they have since re-rented the rental unit to new tenants.

Based on the Landlords' testimony, I find it is not necessary to deal with the issue of an Order of Possession for the Landlords under section 55(1) of the Act as part of this application.

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 the Tenant's own application while the Landlords duly attended, 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 Landlords are 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. Are the Landlords entitled to a Monetary Order for unpaid rent?

Background and Evidence

This tenancy commenced on April 1, 2022 and was month-to-month. Rent was \$1,500.00 due on the first day of each month. The Tenant paid a security deposit of \$750.00 which is held by the Landlords.

A copy of the 10 Day Notice has been submitted into evidence by the Tenant. The 10 Day Notice is signed by CS and has an effective date of September 26, 2022. It states that the Tenant failed to pay \$4,100.00 due on August 1, 2022. The Tenant's application indicates the Tenant received 10 Day Notice on August 23, 2022, which had been attached to her door.

The Landlords testified that the Tenant paid only \$1,400.00 in June 2022, paid nothing in July 2022, and made two payments totalling \$500.00 in August 2022. The Landlords acknowledged that the amount of unpaid rent stated to be owing on the 10 Day Notice should have been \$2,600.00 not \$4,100.00. The Landlords explained they had forgotten to include the April 2022 rent paid by the Tenant on March 26, 2022. The Landlords confirmed the Tenant did not make any further payment since August 2022.

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 accept the Landlords' explanation regarding how they had inadvertently overstated the amount of unpaid rent on the 10 Day Notice. I find the Tenant knew, or should have known, the total amount of rent that was owing to the Landlords. I further find that it would be reasonable to amend the 10 Day Notice to correct the amount of unpaid rent owing from \$4,100.00 to \$2,600.00 under section 68(1) of the Act. I find the 10 Day Notice to otherwise comply with the requirements of section 52 in form and content.

Based on the Tenant's application which acknowledges receipt of the 10 Day Notice attached to the Tenant's door on August 23, 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. This means the Tenant had until August 28, 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 August 24, 2022. I find this application was made within the time limit 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.

I accept the Landlords' undisputed testimony under oath that the Tenant was short \$100.00 for June 2022 rent, did not pay July 2022 rent at all, and was short \$1,000.00 for August 2022 rent. I further accept the Landlords' undisputed testimony that the Tenant did not make any payment since.

In addition, I find there is no evidence before me to suggest that the Tenant had a legal right to withhold or deduct from rent under the Act.

I conclude the Landlords have 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.

Residential Tenancy Policy Guideline 3. Claims for Rent and Damages for Loss of Rent states:

If the tenant has vacated or abandoned the rental unit prior to the date of the dispute resolution hearing, the date the tenancy ended is the date that the tenant vacated or abandoned the rental unit. Only rent owing up until this date would constitute unpaid rent for the purpose of section 55(1.1) of the RTA (section 48(1.1) of the MHPTA).

I accept the Landlords' undisputed testimony that the Tenant was still in the rental unit in early September 2022, but the Landlords found the rental unit to be abandoned by October 9, 2022. I accept the Landlords undisputed testimony that the Tenant did not give any notice prior to vacating the rental unit. As such, I find the tenancy was ended on October 9, 2022 by virtue of the Tenant abandoning the rental unit under section 44(1)(d) of the Act.

I find that pursuant to section 55(1.1) of the Act, the Landlords are entitled to recover from the Tenant \$5,600.00 for unpaid rent owed up to October 9, 2022 (see calculation below).

Pursuant to section 72(2)(b) of the Act, I authorize the Landlords to retain the Tenant's \$750.00 security deposit in partial satisfaction of the total amount awarded in this application.

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

Item	Amount
Unpaid June 2022 Rent	\$100.00
Unpaid July 2022 Rent	\$1,500.00
Unpaid August 2022 Rent	\$1,000.00
Unpaid September 2022 Rent	\$1,500.00
Unpaid October 2022 Rent (not to be pro-rated)	\$1,500.00
Subtotal	\$5,600.00
Less Security Deposit	- \$750.00
Total Monetary Order for Landlords	\$4,850.00

Conclusion

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

The Landlords are entitled to recover \$5,600.00 in unpaid rent from the Tenant. Pursuant to section 72(2)(b) of the Act, the Landlords are authorized to retain the Tenant's \$750.00 security deposit in partial satisfaction of the total amount owing.

Pursuant to section 55(1.1) of the Act, I grant the Landlords a Monetary Order in the amount of **\$4,850.00** 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: January 17, 2023

Residential Tenancy Branch