



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: **OPR-DR, MNR-DR, FFL**

Tenant: **CNR**

Introduction

This hearing dealt with applications filed by both the landlord and the tenant pursuant to the Residential Tenancy Act.

The landlord applied for:

- An order of possession for unpaid rent, by direct request, pursuant to sections 46 and 55;
- A monetary order for unpaid rent, by direct request, pursuant to sections 26 and 67; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant applied for:

- An order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities pursuant to sections 46 and 55.

The tenant did not attend this hearing, although I left the teleconference connection open until 1:42 P.M. to enable the tenant to call into this hearing scheduled for 1:30 P.M. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord attended the hearing and testified she served the tenant with her Notice of Dispute Resolution Proceedings package via email to the tenant's residential address on December 16, 2022. The tracking number is provided on the cover page of this decision.

The landlord testified that the tenant never served her with the tenant's application for dispute resolution or the Notice of Dispute Resolution Proceedings. The landlord had called the Residential Tenancy Branch and was sent a copy of the tenant's Notice of Dispute Resolution Proceedings by an information officer via email.

Rule 7.3 of the Rules of Procedure provides that 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. Rule 7.4 states that 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 to present evidence, any written submissions supplied may or may not be considered.

The tenant did not attend the hearing which was scheduled by conference call at 1:30 p.m. and concluded at 1:42 p.m. As she did not attend, she did not present evidence regarding the merits of his claim for me to consider. Consequently, I dismiss the tenant's application without leave to reapply.

Issue(s) to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent/Utilities be upheld or cancelled?

Background and Evidence

The landlord gave the following undisputed testimony. The tenancy began in April 2021 and the tenant is to pay rent in the amount of \$1,450.00 per month pursuant the tenancy agreement provided as evidence. A security deposit of \$725.00 was collected at the commencement of the tenancy.

The tenant did not pay rent for the month of November and on November 26, 2022, the landlord personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities. The tenant has not paid the outstanding arrears and continues to occupy the rental unit without paying any rent.

Analysis

Section 55(1) states that 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.

The tenant's application was dismissed for her failure to attend the hearing. I have reviewed the notice to end tenancy and I find it complies with the form and content provisions of section 52. Consequently, I grant the landlord an Order of Possession. As the effective date on the notice to end tenancy has passed, the landlord is granted an Order of Possession effective 2 days after service upon the tenant.

Pursuant to section 55(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. Based on the undisputed testimony of the landlord, I am satisfied the tenant was obligated to pay rent in the amount of \$1,450.00 per month and failed to pay rent for the month of November, December and the first 13 days in January, calculated as [$\$1,450.00/31$ days x 13 days = \$608.06.] The landlord is entitled to a monetary order as set out below.

Item	Amount
November 2022 rent	\$1,450.00
December 2022 rent	\$1,450.00
January rent, pro-rated to date of decision	\$608.06
Total	\$3,508.06

As the landlord's application was successful, the landlord can recover the \$100.00 filing fee.

The landlord continues to hold the tenant's security deposit of \$725.00. In accordance with the offsetting provisions of section 72, the landlord may retain the tenant's full security deposit in partial satisfaction of the monetary order.

$[\$3,508.06 + \$100.00 - \$725.00 = \$1,883.06.]$

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant.**

I award the landlord a monetary order in the amount of **\$1,883.06.**

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 13, 2023

Residential Tenancy Branch