



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a tenancy. On November 6, 2022 the tenants applied for:

- an order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, dated November 2, 2022 (the 10 Day Notice); and
- the filing fee.

The hearing was attended by the landlord but not the tenants. The landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; he was made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The landlord testified that the tenants did not serve him with the Notice of Dispute Resolution Proceeding (NDRP) or a copy of their evidence. The landlord testified he did not serve responsive evidence on the tenants.

Preliminary Matter

The landlord testified that as the tenants vacated the rental unit on December 12, 2022, the landlord was not seeking an order of possession, only a monetary order for unpaid rent.

As the landlord has testified the tenants did not serve the NDRP on the landlord, I dismiss the tenants' application for an order to cancel the 10 Day Notice and recovery of the filing fee. The remainder of the decision will consider whether the landlord is entitled to a monetary order for unpaid rent.

Issue to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The landlord provided the following particulars regarding the tenancy. It began December 1, 2020 and the tenants vacated the unit on December 12, 2022; rent was \$2,150.00, due on the first of the month; and the tenants paid a security deposit of \$1,050.00, and a pet damage deposit of \$1,050.00, which the landlord still holds.

A copy of the tenancy agreement was submitted as evidence by the tenants. It indicates that rent is \$2,150.00.

The landlord testified the 10 Day Notice was served on the tenants on November 2, 2022 by sending it to the email address the tenants listed on the tenancy agreement. The landlord testified that their primary way of communicating with the tenants was via that email address for the tenants.

The 10 Day Notice is signed and dated by the landlord, gives the address of the rental unit, states an effective date, states the grounds for ending the tenancy, and is in the approved form. The Notice indicates the tenancy is ending because the tenants have failed to pay rent in the amount of \$2,150.00, due on November 1, 2022.

The landlord testified that he is seeking to recover unpaid rent for November and December 2022, and that he had served the tenants with a second 10 Day Notice.

Analysis

I find the landlord sufficiently served the tenants the 10 Day Notice by email on November 2, 2022, in accordance with section 71 of the Act, and deem the Notice received by the tenants on November 5, 2022, in accordance with section 44 of the regulation.

I find the 10 Day Notice meets the form and content requirements of section 52, as it is signed and dated by the landlord, gives the address of the rental unit, states an effective date, states the grounds for ending the tenancy, and is in the approved form.

Sections 55 (1) and (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.

Having found the 10 Day Notice complies with section 52, and having dismissed the tenant's application, I find I must grant the landlord a monetary order for unpaid rent.

The landlord testified he is seeking to recover unpaid rent for November and December 2022.

[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

Based on the landlord's testimony, I find the tenancy ended on December 12, 2022, the date the tenants vacated the rental unit.

Therefore, I find the landlord is entitled to recover unpaid rent in the amount of \$2,150.00 for November 2022 and \$832.26 for December 1–12, 2022 ($2150/31 \times 12$), for a total of \$2,982.26.

In accordance with section 72 of the Act, I allow the landlord to retain \$1,050.00 of the tenants' security deposit and \$1,050.00 of the tenants' pet damage deposit, for a total of \$2,100.00, in partial satisfaction of the amount owing.

I find the landlord is entitled to a monetary order for \$882.26 ($2,982.26 - 2,100$).

Conclusion

The landlord is granted a monetary order in the amount of \$882.26.

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 03, 2023

Residential Tenancy Branch