



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding ANJALIE DEVELOPMENTSHELEN
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR-MT, LRE, OPR, MNR, FF

Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application filed on January 11, 2023, is seeking orders as follows:

1. For an order of possession based on unpaid rent;
2. For a monetary order for unpaid rent; and
3. To recover the cost of filing the application.

The tenant's application filed on November 10, 2022, is seeking orders as follows:

1. To be allowed more time to dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") issued on November 1, 2022; and
2. To be allowed to suspend or set conditions on the landlord's right to enter the rental unit.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing.

Issue(s) to be Decided

Should the Notice be cancelled?

Is the landlord be granted an order of possession?

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

Background and Evidence

The tenant submits the following in their application.

I contacted Wanda on Nov.5 2022 and asked her for more due to just obtaining a new job and paying my rent on time and mostly early for two years. She said she would have to speak to Chad and I told her to get back to me that day if it was a no, so that I could file with tenancy. She said she would and I did not get the answer until Tues. I just graduated from university and have had a difficult time find employment. I have found two jobs and would like more time for repayment.

The tenant acknowledged that they received the Notice on November 1, 2022. Showing the tenant had failed to pay rent in the amount of \$5,265.00. The tenant stated that did not pay the outstanding rent listed in the Notice. The tenant acknowledged they have failed to pay rent for December 2022, January, February and March 2023, and made one payment of \$600.00 in December 2022.

The tenant testified that the did not withhold the rent, that the landlord breached the Act by deactivating their fobs when they filed to dispute the Notice and removing their parking. The tenant confirmed they have been living in the rental unit.

The landlord testified that the tenant has not paid the rent and agrees the rent owed is the amount of \$9,465.00 as of todays date. The landlord stated they are not prepared to give the tenant more time to vacate and seek an order of possession and a monetary order for the unpaid rent.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

Rules about payment and non-payment of rent

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.

...

How to end a tenancy is defined in Part 4 of the Act.

Landlord's notice: non-payment of rent

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].

...

(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.

Upon review of the Notice, I find the Notice is completed in accordance with the requirements of section 52 of the Act.

Under the legislation the tenant may dispute the Notice for specific reasons, such as they have proof that their rent was paid or that the tenant had the right under the Act to deduct all or a portion from their rent, such as an order from an Arbitrator.

Although the tenant filed an application for dispute resolution which was outside the statutory time limit permitted under the Act. Even If I granted the tenant more time to dispute the Notice the outcome would not change.

The tenant admitted they did not pay the outstanding rent listed in the Notice and has failed to pay subsequent rent for four months, with only one payment of \$600.00 made in December 2022, this is unreasonable and contrary to the Act.

Even, if I accept the tenant submission that the landlord had breached the Act, which was not an issue before me, that does not give the tenant the right under the Act not to

pay the rent. Further, that is inconsistent with the tenant's submission in their application as it appears they were looking for a repayment plan. I find the tenant breached section 26 of the Act, when they failed to pay rent. I find the Notice is valid and remains in full force and effect. I find the tenancy legally ended on November 11, 2022, and the tenant is overholding the premises. Therefore, I dismiss the tenant's application to cancel the Notice.

I have not considered the tenants request to suspend or set conditions on the landlord's right to enter the rental unit, because the tenancy is legally over.

I find the landlord is entitled to an order of possession, pursuant to section 55 of the Act.

Order of possession for the landlord

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.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

I find that the landlord is entitled to monetary order for the unpaid rent up to and including rent March 2023, pursuant to section 55(1.1) of the Act in the amount of **\$9,465.00**.

I find that the landlord has established a total monetary claim of **\$9,565.00** comprised of the above described amount and the \$100.00 fee paid for this application. This order

may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Should the tenant fail to pay the above monetary amount before vacating the rental unit. I authorize the landlord to keep the security deposit to offset the amount owed, pursuant to section 38(4) of the Act.

Conclusion

The tenant's application is dismissed. The landlord is granted an order of possession and monetary order for the unpaid rent..

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: March 24, 2023

Residential Tenancy Branch