



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **OPR-DR, MNR-DR**

CNR

Introduction

On October 27, 2022, the landlord applied for (i) an order of possession on an undisputed notice to end tenancy for unpaid rent (the “Notice”) under section 55(2)(b) of the *Residential Tenancy Act* (the “Act”); and (ii) a monetary order for unpaid rent under section 55(1.1) of the Act.

By way of cross-application, on October 5, 2022 the tenant applied for an order cancelling the Notice, under section 46(4)(b) of the Act.

The landlord attended the hearing while the tenant did not. The landlord testified under oath that they served a *Notice of Dispute Resolution Proceeding* on the tenant by registered mail. There is proof of tracking information submitted it into evidence. It is my finding that the tenant was served with the required notice in compliance with the Act.

Issue(s) to be Decided

1. Is the tenant entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession?
3. Is the landlord entitled to monetary compensation for unpaid rent?

Background and Evidence

In reaching this decision, I have considered all relevant evidence that complied with the *Rules of Procedure*. Only the necessary oral and documentary evidence that helped resolve the issues of the dispute and explain the decision is included below.

The tenancy began March 1, 2022. Rent is \$1,800.00 due on the first date of the month. The landlord currently retains a \$990.00 security deposit. There is a copy of the written tenancy agreement in evidence. The tenant is currently occupying the rental unit.

The landlord served the Notice on September 25, 2022 by delivering it in person to the tenant. Page two of the Notice indicates that the tenant did not pay rent in the amount of \$2,050.00 that was due on September 1, 2022. All pages of the Notice were served and submitted into evidence. The tenant applied for dispute resolution with the Residential Tenancy Branch on October 5, 2022.

The landlord affirmed that the last time the tenant paid rent was August 31, 2022. On this date, the tenant paid \$1,550.00 of the \$1,800.00 of rent due on August 1, 2022 (shortfall of \$250.00). The unpaid rent of \$2,050.00 on the Notice is the combination of \$1,800.00 rent due on September 1, 2022 and \$250.00 unpaid rent due on August 1, 2022.

Analysis

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some of the rent. Section 46(1) of the Act allows landlords to end a tenancy if the tenant does not pay rent on time by issuing a *10 Day Notice to End Tenancy for Unpaid Rent*.

When a *10 Day Notice to End Tenancy for Unpaid Rent* is received by a tenant, that tenant must, within 5 days, either pay the overdue rent or dispute the notice with the Residential Tenancy Branch. If the tenant fails to do so, the tenant is conclusively presumed to accept that the tenancy is ending and must move out of the rental unit by the effective date of the relevant notice.

In this case, the tenant received the Notice on September 25, 2022 and the tenant applied for dispute resolution on October 5, 2022, which is beyond the 5 days time limit. Accordingly, I find that the tenant is conclusively presumed to have accepted the end of the tenancy on the effective date of the Notice. As a result, the tenant's application to

cancel the Notice is dismissed. The landlord is granted an order of possession under section 55(1) of the Act.

The landlord is also entitled to an order for unpaid rent under section 55(1.1) of the Act. Based on the testimony of the landlord, I find that the tenant failed to pay rent as follows:

Month	Rent Due	Rent Paid	Date Paid	Rent Missing
August 1, 2022	\$1,800.00	\$1,550.00	August 31, 2022	(\$250.00)
September 1, 2022	\$1,800.00	None	n/a	(\$1,800.00)
October 1, 2022	\$1,800.00	None	n/a	(\$1,800.00)
November 1, 2022	\$1,800.00	None	n/a	(\$1,800.00)
December 1, 2022	\$1,800.00	None	n/a	(\$1,800.00)
January 1, 2023	\$1,800.00	None	n/a	(\$1,800.00)
February 1, 2023	\$1,800.00	None	n/a	(\$1,800.00)
			Total	(\$11,050.00)

Therefore, the tenant is ordered to pay \$11,050.00 to the landlord. Pursuant to sections 38 and 72 of the Act, the landlord is ordered to retain the \$990.00 security deposit as partial satisfaction of the payment order.

Conclusion

The tenant's application is dismissed without leave to reapply. The landlord's application is granted.

An Order of Possession is attached to this Decision and must be served on the tenant. The tenant has two days to vacate the rental unit.

A Monetary order for \$10,060.00 is attached to this Decision and must be served on the tenant.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: March 2, 2023

Residential Tenancy Branch