



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, FFT

Introduction

The Tenant seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- an order pursuant to s. 46 cancelling a 10-Day Notice to End Tenancy signed on March 2, 2023 (the “10-Day Notice”); and
- return of the filing fee pursuant to s. 72.

B.H. appeared as the Tenant. A.G. appeared as the Landlords’ agent.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The parties advise that they served their application materials on the other side, except for three letters the Tenant was not served on the Landlord. Both parties acknowledge receipt of the other’s application materials. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other’s application materials except for the Tenant’s three letters, which are excluded as they were not served.

Issues to be Decided

- 1) Is the 10-Day Notice enforceable?
- 2) If so, are the Landlords entitled to an order of possession and an order for unpaid rent?
- 3) Is the Tenant entitled to her filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenant moved into the rental unit on May 1, 2022.
- Rent of \$1,900.00 is due on the first of each month.
- The Tenant paid a security deposit of \$950.00 to the Landlords.

I am provided with a copy of the tenancy agreement by the parties, which indicates that the tenancy was for a fixed term ending on April 30, 2023.

The Landlords' agent advises that the Tenant failed to pay rent on March 1, 2023 and that the Landlords served the 10-Day Notice by posting it to the Tenant's door on March 2, 2023. The Tenant acknowledges receipt of the 10-Day Notice on March 2, 2023. The parties provide a copy of the 10-Day Notice, which indicates unpaid rent of \$1,900.00 due on March 1, 2023.

The parties advise that the Tenant has since vacated the rental unit, with the Tenant saying she moved out on March 18, 2023.

The Tenant confirms she did not pay rent on March 1, 2023 as alleged by the Landlords. She indicates that one of the Landlords attended the rental unit on December 18, 2022 to advise her that they would be breaking the term of the lease so that family members could move into the rental unit. The Tenant says she did not pay rent on March 1, 2023 as she was entitled to one month's compensation. The Tenant, however, acknowledges that she was never served with a Two-Month Notice to End Tenancy for landlord's use of the property and that the notice she did receive for the potential use of the rental unit by the Landlords' family was verbal.

Analysis

The Tenant applies to cancel the 10-Day Notice.

Pursuant to s. 46(1) of the *Act*, where a tenant fails to pay rent when it is due, a landlord may elect to end the tenancy by issuing a notice to end tenancy that is effective no

sooner than 10-days after it is received by the tenant. Pursuant to s. 46(4) of the *Act*, a tenant has 5-days from receiving a 10-day notice to end tenancy to either pay the overdue rent or file an application to dispute the notice. If a tenant files to dispute the notice, the burden of proving it was issued in compliance with s. 46 of the *Act* rests with the respondent landlord.

As per s. 46(2) of the *Act*, all notices issued under s. 46 must comply with the form and content requirements set by s. 52 of the *Act*. I have reviewed the 10-Day Notice and find that it complies with the formal requirements of s. 52 of the *Act*. It is signed and dated by the Landlord, states the address for the rental unit, states the correct effective date, sets out the grounds for ending the tenancy, and is in the approved form (RTB-30).

In this instance, there is no dispute that the Tenant did not pay rent on March 1, 2023. The Tenant argues that she is entitled to a month's free rent due to the Landlords' use of the rental unit. Pursuant to s. 26(1) of the *Act*, 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 *Act* grants the tenant the right to deduct all or a portion of the rent. Under s. 51(1) of the *Act*, tenants who receive a notice to end tenancy issued under s. 49, which is for landlord's use of the property, are entitled to receive compensation equivalent to one month's rent.

By the Tenant's own admission, no notice to end tenancy under s. 49 was ever served. The wording under s. 51 is clear that the right to compensation is only triggered if a tenant receives a notice to end tenancy under s. 49, which did not occur here. In other words, the Tenant was not entitled to withhold rent as she was not entitled to compensation.

I find that the Landlords have established that the 10-Day Notice was properly issued. I dismiss the Tenant's application to cancel the 10-Day Notice without leave to reapply.

Section 55(1) of the *Act* indicates that where a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with s. 52, then I must grant the landlord an order for possession. As the Landlords have already taken back possession of the rental unit, granting an order of possession would be moot. Given this, I decline to grant an order of possession under the circumstances.

Section 55(1.1) of the *Act* indicates that where a tenant's application to cancel a notice to end tenancy for unpaid rent is dismissed and the notice complies with the formal

requirements of s. 52, then I must grant an order for unpaid rent. It is undisputed that rent of \$1,900.00 was unpaid on March 1, 2023. Accordingly, I find that the Landlords are entitled to an order for unpaid rent totalling \$1,900.00.

Conclusion

The Tenant's application to cancel the 10-Day Notice is dismissed without leave to reapply.

The Landlords have taken possession of the rental unit such that granting an order of possession would be moot. I decline to grant an order of possession under s. 55(1) of the *Act* under these circumstances.

The Landlords are entitled to an order for unpaid rent under s. 55(1.1) of the *Act*. I find that total unpaid rent is \$1,900.00. I exercise my discretion under s. 72(2) of the *Act* and direct that the Landlords retain the security deposit of \$950.00 in partial satisfaction of the unpaid rent claim. Taking this into account, I order that the Tenant pay the balance, being **\$950.00** (\$1,900.00 - \$950.00), to the Landlords.

I find that the Tenant was unsuccessful in her application. Her claim for her filing fee under s. 72(1) of the *Act* is dismissed without leave to reapply.

It is the Landlords' obligation to serve the monetary order on the Tenant. If the Tenant does not comply with the monetary order, it may be filed by the Landlords with 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: March 30, 2023

Residential Tenancy Branch