



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR

Introduction

The Tenant seeks an order pursuant to s. 46 of the *Residential Tenancy Act* (the “*Act*”) cancelling a 10-Day Notice to End Tenancy signed on March 8, 2023 (the “10-Day Notice”).

K.D. appeared as the Landlord. The Tenant did not attend the hearing, nor did someone attend on their behalf.

Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Tenant did not attend the hearing for their own application, it was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure.

The Landlord 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 Landlord acknowledges receipt of the Tenant’s application materials. Pursuant to s. 71(2) of the *Act*, I find that the Tenant’s application materials were sufficiently served on the Landlord.

The Landlord advises that her response evidence was personally served on the Tenant on March 22, 2023. I find that the Landlord’s evidence was served in accordance with s. 89 of the *Act* and received by the Tenant on March 22, 2023.

Issues to be Decided

- 1) Is the 10-Day Notice enforceable?
- 2) If so, is the Landlord entitled to an order of possession and an order for unpaid rent?

Evidence and Analysis

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 Landlord confirmed the following details with respect to the tenancy:

- The Tenant moved into the rental unit on March 1, 2021.
- Rent of \$2,800.00 was due on the 15th and 30th of each month.
- An security deposit of \$1,400.00 was requested but never paid by the Tenant.

I am provided with a copy of the tenancy agreement by the Landlord.

The Landlord advises that the 10-Day Notice was personally served on the Tenant on March 8, 2023. I accept the Landlord's undisputed testimony and find that the 10-Day Notice was served in accordance with s. 88 of the *Act*. I am provided with a copy of the 10-Day Notice, which lists that the Tenant was in arrears in rent in the amount of \$1,800.00 for January 2023 and failed to pay rent of \$2,800.00 for February and March 2023. At the hearing, the Landlord advised that Tenant was frequently short on rent and that actual arrears totalled \$26,500.00.

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).

The Landlord provides a copy of the payment history over the course of the tenancy, which the Landlord affirmed to be accurate. I accept the Landlord's undisputed evidence that rent was unpaid as follows:

Month	Rent Owed	Rent Paid	Arrears
January 2022	\$2,800.00	\$2,900.00	(\$100.00) (overpay)
February 2022	\$2,800.00	\$1,300.00	\$1,500.00
March 2022	\$2,800.00	\$1,400.00	\$1,400.00
April 2022	\$2,800.00	\$2,600.00	\$200.00
May 2022	\$2,800.00	\$0.00	\$2,800.00
June 2022	\$2,800.00	\$1,000.00	\$1,800.00
July 2022	\$2,800.00	\$0.00	\$2,800.00
August 2022	\$2,800.00	\$1,600.00	\$1,200.00
September 2022	\$2,800.00	\$1,500.00	\$1,300.00
October 2022	\$2,800.00	\$900.00	\$1,900.00
November 2022	\$2,800.00	\$0.00	\$2,800.00
December 2022	\$2,800.00	\$1,300.00	\$1,500.00
January 2023	\$2,800.00	\$1,000.00	\$1,800.00
February 2023	\$2,800.00	\$0.00	\$2,800.00
March 2023	\$2,800.00	\$0.00	\$2,800.00
Total Arrears			\$26,500.00

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. There are limited circumstances under the *Act* in which a tenant may deduct money from rent. As the Tenant did not attend the hearing to adduce evidence on the circumstances for her failure to pay rent, I find that she was not permitted to do so.

Accordingly, I find that the Landlord has demonstrated that the 10-Day Notice was properly issued under s. 46 of the *Act*. I hereby dismiss the Tenant's application to cancel the 10-Day Notice without leave to reapply.

Section 55(1) of the *Act* provides 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. At the hearing, the Landlord advised that the Tenant gave her notice on April 3, 2023 that she had moved out of the rental unit. The Landlord further advised that she has taken back possession of the rental unit. Accordingly, I decline to grant an order of possession as the Landlord already has possession of the rental unit.

Section 55(1.1) of the *Act* provides 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. In this case, I find that the tenancy ended on April 3, 2023, which is the date the Landlord took back possession upon being notified by the Tenant she had moved out. I accept the Landlord's undisputed evidence that unpaid rent totals \$26,500.00 and shall receive an order in that amount.

I have considered whether rent for April 2023 ought to be ordered. However, as rent is due on the 15th, I find that it has not come due under the tenancy agreement such that this amount cannot be ordered under s. 55(1.1) of the *Act*.

I have also considered whether unpaid rent exceeding the amount listed in the 10-Day Notice can be ordered under s. 55(1.1) of the *Act*. I note that the wording of s. 55(1.1) of the *Act* does not draw such a distinction nor do I find such a distinction arises by implication when s. 55(1.1) is read together with ss. 46 and 52. I accept that the purpose s. 55(1.1) of the *Act* is to eliminate the need for a landlord to apply for a monetary claim for unpaid rent when a notice is disputed by a tenant and upheld at the hearing. This reduces administrative burdens on landlords and streamlines the dispute process. Taking into consideration the purpose of s. 55(1.1) of the *Act*, I find that total unpaid rent throughout the tenancy can be considered, which is why I have ordered it as set out above.

Conclusion

I dismiss the Tenant's application to cancel the 10-Day Notice without leave to reapply.

The Landlord took back possession of the rental unit on April 3, 2023 such that an order of possession under s. 55(1) of the *Act* is unnecessary.

I grant the Landlord an order for unpaid rent pursuant to s. 55(1.1) of the *Act*. The Tenant shall pay **\$26,500.00** to the Landlord as unpaid rent.

It is the Landlord's obligation to serve the monetary order on the Tenant. If the Tenant does not comply with the monetary order, it may be filed 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: April 05, 2023

Residential Tenancy Branch