



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, RR, RP, PSF

Introduction

This hearing commenced at 11:00 a.m. on this date, via teleconference call, to deal with the tenant's application for cancellation of a 10 Day Notice to End Tenancy for Unpaid rent or Utilities ("10 Day Notice"); authorization to reduce rent payable; repair orders; and, orders for the landlord to provide services or facilities.

The property manager and the property owner appeared for the hearing and were affirmed. There was no appearance on part of the tenants despite leaving the teleconference call open until 11:11 a.m.

The property manager testified that the tenant had only orally notified her that the tenants had filed an Application for Dispute Resolution so the property manager contacted the Residential Tenancy Branch ("RTB") and was provided a copy of the Notice of Dispute Resolution Proceeding by the RTB. The property manager stated that despite the tenant's failure to properly serve, the landlord was prepared and wished to proceed. I deemed the landlord to be sufficiently served pursuant to the authority afforded me under section 71 of the Act.

Since the tenants failed to appear for their hearing, I dismissed all of the remedies they sought in their application, with the exception of cancellation of the 10 Day Notice, without leave to reapply.

Where a tenant applies to dispute a 10 Day Notice, section 55(1) and (1.1) provide that I must provide the landlord an Order of Possession and Monetary Order for unpaid rent where the 10 Day Notice is upheld or the tenant's application is dismissed. Accordingly, I proceeded to examine the landlord and the evidence before me with a view to

determining the landlord's entitlement to an Order of Possession and Monetary Order for unpaid rent.

The property manager requested that the landlord be authorized to retain the security deposit in partial satisfaction of the unpaid rent should the landlord obtain a Monetary Order for unpaid rent. I considered this request since it is non-prejudicial to the tenants.

I noted that the tenants identified five co-tenants in filing their Application for Dispute Resolution but only two tenants are named on the 10 Day Notice they submitted as evidence. The property manager explained the other three named applicants are the tenants' children and the children are not tenants under the tenancy agreement. I amended the tenant's application accordingly to exclude the names of the tenants' children.

Issue(s) to be Decided

1. Should the 10 Day Notice be upheld or cancelled?
2. Is the landlord entitled to an Order of Possession and Monetary Order for unpaid rent under sections 55(1) and (1.1) of the Act?
3. Is the landlord authorized to retain the tenants' security deposit in partial satisfaction of unpaid rent?

Background and Evidence

The landlord submitted that the tenancy started on October 1, 2022 and the landlord collected a security deposit of \$800.00. The tenants are required to pay rent of \$1600.00 on the first day of every month; however, the landlord provides a \$100.00 rent reduction in the winter months of November through March to offset natural gas bills.

In filing this Application for Dispute Resolution, the tenants had provided a copy of a 10 Day Notice issued to them by the property manager, dated January 9, 2023. The 10 Day Notice has a stated effective date of January 19, 2023 and indicates rent of \$2330.00 was outstanding as of January 1, 2023. The property manager testified that the 10 Day Notice was served by attaching it to the rental unit door on January 9, 2023 and this is consistent with the tenant's Application for Dispute Resolution. The tenants filed to dispute the 10 Day Notice on January 9, 2023.

The property manager testified that the amount indicated on the 10 Day Notice is the sum of: \$360.00 in rent owing for November 2022; \$800.00 in rent owing for December 2022 and \$1500.00 for rent that was not paid for the month of January 2023.

The property manager testified the tenants did not pay the outstanding rent after the 10 Day Notice was served; that the tenants continue to occupy the rental unit; and the tenants have not paid any rent toward subsequent months.

Analysis

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations, or tenancy agreement, unless the tenant has a legal right to withhold rent.

Where a tenant does not pay rent the landlord is at liberty to serve the tenant with a 10 Day Notice. When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the 10 Day Notice or the tenant has five days to dispute the 10 Day Notice by filing an Application for Dispute Resolution.

I accept that the landlord served the tenants with a 10 Day Notice on January 9 ,2023 and the tenants received it the same day since they filed to dispute the 10 Day Notice on January 9, 2023. Accordingly, the tenants had until January 14, 2023 to either pay the outstanding rent or file to dispute the 10 day Notice.

In this case, I heard unopposed testimony that the tenants did not pay the outstanding rent indicated on the 10 Day Notice. Nor do the tenants indicate in their Application for Dispute Resolution that the rent had been paid. Therefore, I find the 10 Day Notice was not nullified by payment of the outstanding rent.

The tenants did file to dispute the 10 Day Notice; however, upon review of the tenant's Application for Dispute Resolution I do not see a legal basis for withholding or making deductions from rent payable to the landlord. The Act provides very specific and limited circumstances when a tenant may legally withhold or make deductions from rent due to the landlord and none of the tenant's submissions align with the permissible circumstances for withholding rent.

Upon review of the 10 Day Notice provided by the tenants, I am satisfied it is in the approved form and it was duly completed by the landlord.

Having been satisfied the tenants were served with a valid 10 Day Notice that meets the form and content requirements of the Act and there is no basis for cancellation of the 10 Day Notice before me, I uphold the 10 Day Notice and dismiss the tenant's request for cancellation.

I further accept the unopposed testimony of the property manager that the tenants continue to occupy the rental unit and have not paid any rent toward the subsequent months.

Section 55(1) and (1.1) of the Act provide as follows:

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.

Based on all of the above, I find the criteria of section 55(1) has been met and the landlord is entitled to an Order of Possession. With this decision, I provide the landlord with an Order of Possession effective two (2) days after service upon the tenants.

I further find the landlord entitled to recover from the tenants the unpaid rent that was indicated on the 10 Day Notice plus unpaid rent for the months of February 2023 through May 2023 since they have continued to occupy the rental unit while awaiting this hearing and have not paid rent. I also grant the landlord's request for authorization to retain the tenant's security deposit in partial satisfaction of the unpaid rent.

Therefore, I provide the landlord with a Monetary Order for unpaid rent under section 55(1.1) of the Act in the net amount calculated as follows:

Unpaid rent as per 10 Day Notice	\$2660.00
Unpaid rent – February 2023 (with rent reduction)	1500.00
Unpaid rent – March 2023 (with rent reduction)	1500.00
Unpaid rent – April 2023	1600.00
Unpaid rent – May 2023	1600.00
Less: security deposit	(800.00)
Monetary Order for landlord	\$8060.00

Conclusion

The tenant's Application for Dispute Resolution is dismissed without leave to reapply.

The landlord is provided an Order of Possession under section 55(1) of the Act that is effective two (2) days after service.

The landlord is authorized to retain the tenant's security deposit and is provided a Monetary Order under section 55(1.1) of the Act in the net amount to \$8060.00 to enforce against the tenants.

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: May 05, 2023

Residential Tenancy Branch