



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, OPR, MNR, OLC

Introduction

This hearing was set to deal with cross applications. The tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") and orders for compliance. The landlord applied for an Order of Possession and Monetary Order for unpaid rent.

The landlord appeared for the hearing and was affirmed. During the hearing, the landlord called her husband to provide testimony as to service of the 10 Day Notice. There was no appearance by the tenant despite leaving the teleconference open for approximately 30 minutes.

The landlord confirmed receiving the tenant's application.

As for the landlord's application, the landlord testified and provided a registered mail receipt to prove it was sent to the tenant, at the rental unit, on March 10, 2023. The landlord confirmed the tenant was still residing in the rental unit until at least April 24, 2023. Section 90 of the Act deems a person to be in receipt of documents five days after mailing even if the person refuses to accept or pick up their mail. Having been satisfied the tenant was residing at the rental unit at the time of mailing the proceeding package I deemed the tenant to be in receipt of the landlord's proceeding package on March 15, 2023.

The landlord also sent a proceeding package to another person identified on the tenant's Application for Dispute Resolution, even though that person was not identified on the tenancy agreement, out of an abundance of caution. Since this other person was not named as a tenant in the tenancy agreement, I did not consider them to be a tenant and I excluded that person as a named party.

Since the tenant did not appear at the hearing, I dismissed the tenant's application without leave to reapply.

I proceeded to determine whether the landlord was entitled to an Order of Possession and Monetary Order for unpaid rent.

The landlord testified that the last she has heard from the tenant was April 24, 2023 via text message when the tenant informed the landlord she is almost moved out. The landlord acknowledged they have not inspected the rental unit since then to confirm the tenant has moved out. Accordingly, the landlord seeks an Order of Possession in the event the tenant remains in possession of the rental unit.

In filing the landlord's application, the landlord requested compensation of \$4500.00 for unpaid rent, which is the amount appearing on the 10 Day Notice; however, the landlord submitted the tenant did not pay rent for any subsequent months even though the tenant continued to hold possession of the rental unit until at least April 24, 2023 while awaiting this hearing. Accordingly, I amended the landlord's monetary claim under Rule 4.6 of the Rules of Procedure, which provides:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

I find the request to amend the monetary claim to include loss of rent for the months after filing and to reflect the tenant's continued occupation of the rental unit while awaiting this proceeding, without paying rent, is reasonably foreseeable and I amend the landlord's monetary claim accordingly.

The landlord also requested my authorization to retain the tenant's security deposit in partial satisfaction of the unpaid rent. I amend the landlord's application as I find this request to be non-prejudicial to the tenant since the security deposit will reduce any Monetary Order I provide the landlord.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord entitled to a Monetary Order for unpaid rent?
3. Is the landlord authorized to retain the tenant's security deposit?

Background and Evidence

The tenancy commenced on November 22, 2022. The tenant paid a security deposit of \$1125.00 and was required to start paying rent of \$2250.00 on December 1, 2022 and every month thereafter.

The tenant did not pay rent to the landlord for December 2022. The tenant did not pay rent to the landlord for January 2023. On January 6, 2023 the landlord's husband and agent issued a 10 Day Notice to the tenant and emailed it to the tenant that same day.

The landlord did not have written consent or agreement to serve the tenant via email. The landlord's husband testified that he also had the 10 Day Notice posted to the rental unit door on January 8, 2023. I noted the tenant acknowledged receiving the 10 Day Notice on January 19, 2023 when she filed her application.

The 10 Day Notice indicates the tenant failed to pay \$4500.00 in rent for the months of December 2022 and January 2023. The landlord testified that the tenant did not pay the outstanding rent after the tenant received the 10 Day notice. The tenant continued to reside in the rental unit until at least April 24, 2023 without paying rent for the subsequent months of February 2023, March 2023 and April 2023.

The landlord seeks an Order of Possession in the even the tenant has not already vacated or abandoned the rental unit.

The landlord also seeks to recover unpaid rent and authorization to retain the security deposit.

Documentation provided for my review includes: the tenancy agreement; the 10 Day Notice; a signed Proof of Service for the 10 Day Notice; the move in inspection report; several text message exchanges and registered mail receipts.

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 to End Tenancy for Unpaid Rent. 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 the unopposed evidence before me that the tenant was required to pay rent of \$2250.0 on the first day of every month and the tenant has failed to do so for the month of December 2022 onwards. I also accept that the tenant received a 10 Day Notice on January 19, 2023, as acknowledged in her application. Upon review of the 10 Day Notice, I find it is in the approved form and duly completed. Accordingly, I find the tenant had until January 24, 2023 to either pay the outstanding rent or file to dispute the 10 Day Notice.

I accept the unopposed evidence before me that the tenant did not pay the outstanding rent after receiving the 10 Day Notice. The tenant did dispute the 10 Day Notice; however, the basis for her dispute, which is that she could not obtain a rent subsidy, is not a legal basis for withholding rent from the landlord. Therefore, I uphold the 10 Day Notice, the tenancy is at an end due to unpaid rent, and I find the landlord is entitled to regain possession of the rental unit.

In the event the tenant has not already vacated or abandoned the rental unit, I provide the landlord with an Order of Possession effective two (2) days after service upon the tenant.

Based upon the unopposed evidence before me, I find the landlord entitled to recover from the tenant the unpaid rent that was due on December 1, 2022 and January 1, 2023 in the sum of \$4500.00, as indicated on the 10 Day Notice. Having heard unopposed evidence that the tenant continued to hold possession of the rental unit until at least April 24, 2023 while awaiting this proceeding, without paying any rent, I further award the landlord unpaid rent for these months.

I authorize the landlord to retain the tenant's security deposit and interest in partial satisfaction of the rent owed to the landlord. I calculate the interest to be \$8.71. I also award the landlord recovery of the \$100.00 filing fee paid for this application.

In light of the above, the landlord is provided a Monetary Order to serve and enforce upon the tenant, calculated as follows:

Unpaid rent (Dec 2022 – April 2023)	\$11250.00
Filing fee	100.00
Less: security deposit and interest	<u>(1133.71)</u>
Monetary Order	\$10216.29

The landlord is at liberty to make another Application for Dispute Resolution against the tenant to seek recovery of any other damages or losses not addressed in this decision, including loss of rent for May 2023.

Conclusion

In the event the tenant has not already vacated or abandoned the rental unit, the landlord is provided an Order of Possession effective two (2) days after service upon the tenant.

The landlord is authorized to retain the tenant's security deposit and interest and is provided a Monetary Order in the net amount of \$10216.29 to enforce against 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 *Residential Tenancy Act*.

Dated: May 26, 2023

Residential Tenancy Branch