



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, OPR-DR, MNR-DR, FFL,

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution under the Residential Tenancy Act (the "Act") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) under sections 46 and 55 of the Act
- an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) under sections 46 and 55 of the Act
- a Monetary Order for unpaid rent under sections 26, 55 and 67 of the Act
- authorization to recover the filing fee for this application from the tenant under section 72 of the Act

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Order for unpaid rent?

Is the landlord entitled to recover the filing fee for this application from the tenant

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that the Proceeding Package was not duly served in accordance with the Act. The landlord affirmed that he did not receive anything from the tenant and found out about the tenant's cross application when he called the Residential Tenancy Branch (RTB)

Service of Evidence

Based on the submissions before me, I find that the tenant's evidence was not served to the landlord in accordance with section 88 of the Act. The landlord affirms receiving nothing from the tenant.

Based on the submissions before me, I find that the landlord's evidence was served to the tenant in accordance with section 88 of the Act. The landlord provided registered mail receipts to support service of evidence.

Preliminary Matters

The landlord received an order of possession in regards to a One Month Notice for Cause in hearing #910131602 on November 8, 2023.

At the outset of the hearing the landlord sought to increase their monetary claim from \$2500.00 to \$5000.00 to reflect the tenant's failure to pay \$2500.00 in monthly rent for November 2023, the additional month of unpaid rent waiting for this hearing.

Background and Evidence

The landlord provided a copy of the tenancy agreement showing rent is \$2500.00 per month, due on the first day of the month. There is a security deposit of \$1250.00

The landlord affirms that the tenant is still in the rental unit. He further affirms that the tenant has unpaid rent for October and November of 2023.

The landlord provided copies of the tenant's payment ledger that shows the tenant's cheques were returned for insufficient funds in July, August and October of 2023.

The cheque for the rent due October 1, 2023, was returned for insufficient funds on October 6, 2023.

The landlord provided a screen shot of an email to the tenant dated October 16, 2023, with the 10 Day Notice as an attachment. He further provided a copy of an Address for Service RTB-51 that has the email used listed as an email for service for the tenant.

The 10 Day Notice is in accordance with the fit and from required under the Act.

Analysis

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

I find that the 10 Day Notice was duly served to the tenant on 2023-10-16, and the rent for October and November of 2023 remains unpaid. Therefore, I find that the landlord is entitled to an Order of Possession based on the 10 Day Notice under sections 46 and 55 of the Act. However, the landlord already has an order of possession.

Is the landlord entitled to a Monetary Order for unpaid rent?

I find that the landlord has established a claim for \$5000.00 in unpaid rent for October and November of 2023. Therefore, I find the landlord is entitled to a Monetary Order for unpaid rent under section 67 of the Act.

Is the landlord entitled to recover the filing fee for this application from the tenant?

As the landlord was successful in their application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

Conclusion

I grant the landlord a Monetary Order in the amount of **\$5100.00** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 55 of the Act	\$5000.00
authorization to recover the filing fee for this application from the tenant under section 72 of the Act	\$100.00
Total Amount	\$5100.00

The landlord is provided with this Order in the above terms and the tenant(s) must be served with **this Order** as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The landlord may retain the tenant's security deposit of \$1250.00 as partial satisfaction of the monetary order.

Although the landlord is entitled to an order of possession, as he already has an order of possession another one will not be issued.

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: November 17, 2023

Residential Tenancy Branch