



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on April 04, 2021. The Tenant applied to dispute four 10 Day Notices to End Tenancy for Unpaid Rent or Utilities all dated April 01, 2021.

The Tenant did not appear at the hearing. The Landlord did appear at the hearing. I waited 10 minutes at the outset to allow the Tenant to call into the hearing; however, the Tenant did not do so. The Landlord confirmed the Tenant was still living at the rental unit and the Landlord was seeking an Order of Possession for the rental unit and therefore I proceeded with the hearing.

I explained the hearing process to the Landlord. I told the Landlord they were not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). The Landlord provided affirmed testimony.

The Tenant submitted evidence prior to the hearing. The Landlord did not submit evidence. The Landlord confirmed receipt of the hearing package and Tenant's evidence.

The Landlord was given an opportunity to provide relevant evidence and make relevant submissions. I have considered the Tenant's documentary evidence and the testimony and submissions of the Landlord. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the 10 Day Notices to End Tenancy for Unpaid Rent or Utilities be cancelled?

2. If the 10 Day Notices to End Tenancy for Unpaid Rent or Utilities are not cancelled, is the Landlord entitled to an Order of Possession?

Background and Evidence

The Landlord testified as follows.

There is a written tenancy agreement between the parties. The tenancy started September 01, 2019 and is a month-to-month tenancy. Rent is \$1,300.00 per month due on the last day of each month. The Tenant paid a \$650.00 security deposit and no pet damage deposit.

All four 10 Day Notices to End Tenancy for Unpaid Rent or Utilities (the "Notices") were issued April 01, 2021. The Notices were served on an adult who lives at the rental unit with the Tenant.

At the time the Notices were issued, the Tenant owed the following rent:

- \$300.00 due June 30, 2020
- \$600.00 due July 31, 2020
- \$1,600.00 due March 31, 2021
- \$100.00 due February 28, 2021

A Repayment Plan was not issued for rent owing from June and July of 2020.

The Tenant did not have authority under the *Residential Tenancy Act* (the "Act") to withhold rent.

The Tenant paid \$800.00 of outstanding rent on April 01, 2021 and \$900.00 on April 05, 2021.

Around \$2,000.00 in rent is currently outstanding.

The Tenant submitted the following documentary evidence:

- Proof of payments of \$800.00 and \$900.00 on April 01, 2021 and April 05, 2021
- The Notices issued for:
 - \$300.00 due June 30, 2020
 - \$600.00 due July 31, 2020

- \$1,600.00 due March 31, 2021
- \$100.00 due February 28, 2021

Analysis

Rule 7.3 of the Rules states:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Given the Tenant did not appear at the hearing, the Application is dismissed without leave to re-apply.

Section 55 of the *Act* states:

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.

Pursuant to rule 6.6 of the Rules, the Landlord still has the onus to prove the grounds for the Notices.

Section 26(1) of the *Act* states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 46 of the *Act* allows a landlord to end a tenancy when a tenant fails to pay rent. The relevant portions of section 46 state:

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2) A notice under this section must comply with section 52...

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4) Within 5 days after receiving a notice under this section, the tenant may

**(a) pay the overdue rent, in which case the notice has no effect,
or**

**(b) dispute the notice by making an application for dispute
resolution...**

(emphasis added)

I accept the undisputed testimony of the Landlord that the Tenant is required to pay \$1,300.00 per month in rent by the last day of each month pursuant to the tenancy agreement between the parties.

I accept the undisputed testimony of the Landlord that the Tenant failed to pay the following rent amounts:

- \$300.00 due June 30, 2020

- \$600.00 due July 31, 2020
- \$1,600.00 due March 31, 2021
- \$100.00 due February 28, 2021

I accept the undisputed testimony of the Landlord that the Tenant did not have authority under the *Act* to withhold the above rent.

Pursuant to the *Covid-19 (Residential Tenancy Act and Manufactured Home Park Tenancy Act) (No. 3) Regulation*, the Landlord was required to issue the Tenant a Repayment Plan for outstanding rent for June and July of 2020 prior to issuing a 10 Day Notice for this unpaid rent. Given the Landlord did not issue a Repayment Plan for these amounts, the Notices relating to June and July 2020 are cancelled.

In relation to the Notices for February and March of 2021, the Landlord was permitted to issue the Notices pursuant to section 46(1) of the *Act*.

I accept the undisputed testimony of the Landlord that the Notices were served on an adult that lives with the Tenant on April 01, 2021 and find the Tenant was served with the Notices in accordance with section 88(e) of the *Act*. I am satisfied the Tenant received the Notices April 01, 2021.

Pursuant to section 46(4) of the *Act*, the Tenant had five days after receiving the Notices to pay the outstanding rent or dispute the Notices.

I accept that the Tenant paid the Landlord \$800.00 of outstanding rent on April 01, 2021 and \$900.00 on April 05, 2021. Therefore, the Tenant paid the \$1,700.00 outstanding by April 06, 2021. Given this, the Notices have no effect as stated in section 46(4)(a) of the *Act*.

Given the above, I am not satisfied the Landlord is entitled to an Order of Possession based on the Notices. Nor do I find it appropriate to issue a Monetary Order pursuant to section 55(1.1) of the *Act*. I also note that the Landlord did not seem to know exactly what amount of rent is currently outstanding and did not provide any documentary evidence showing what amount of rent is currently outstanding.

Conclusion

The Application is dismissed without leave to re-apply.

I am not satisfied the Landlord is entitled to an Order of Possession or Monetary Order pursuant to section 55 of the *Act*.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: July 28, 2021

Residential Tenancy Branch