



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: CNR, PSF, LRE, OLC, FFT
For the landlord: OPR, OPC, MNRL-S, FFL

Introduction

On June 7, 2021 the tenant applied for dispute resolution for an order cancelling the 10-Day Notice to End Tenancy Issued for Unpaid Rent issued by the landlord (the “10-Day Notice”). Additionally, they applied for a: provision of services/facilities by the landlord; a restriction on the landlord’s right to enter; the landlord’s compliance with the legislation and/or tenancy agreement; and reimbursement of the Application filing fee.

On August 13, 2021 the landlord applied for an order of possession of the rental unit, and a monetary order for unpaid rent. Additionally, they applied for reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on October 5, 2021. The landlord attended the telephone conference call hearing; the tenant did not attend.

At the outset of the hearing, the landlord advised they notified the tenant of their Application via registered mail; proof of this package mailed to the tenant appears in the landlord’s own evidence. From this, I am satisfied the landlord properly sent the tenant their prepared evidence well in advance of the hearing. In the hearing, the landlord stated they were not aware the tenant had made their own Application to dispute the 10-Day Notice.

Preliminary Matter

The tenant did not attend the hearing, although I left the teleconference hearing connection open until 11:30am to enable them to call in to this teleconference hearing scheduled for 11:00am. I confirmed the correct call-in numbers and participant codes were provided in the Notice of Hearing generated when they applied. I also confirmed throughout the duration of the call that the tenant was not in attendance.

The *Residential Tenancy Branch Rules of Procedure* Rule 7.3 provides that if a party fails to attend the hearing, the arbitrator may conduct the hearing in the absence of that party or dismiss the application without leave to reapply. On this basis, I dismiss the tenants' application for cancellation of the 10-Day Notice. The tenants do not have leave to reapply on this issue.

Similarly, the tenant did not attend to pursue their other claims listed above. On these separate portions of their Application, the tenants do not have leave to reapply.

Issues to be Decided

Is the landlord entitled to an Order of Possession pursuant to s. 55 of the *Act*?

Is the landlord entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, I set out below only those portions that are relevant to the issues and findings in this matter.

In the hearing, the landlord stated there was no formal tenancy agreement. They confirmed the tenancy started in April 2020. The monthly rent was \$1,100 per month, as set out also on the tenant's Application. The tenant paid a security deposit of \$550 that the landlord still holds as of the date of the hearing.

The landlord provided a copy of the 10-Day Notice, issued June 4, 2021. This gave the tenant the move-out date of June 14, 2021. This listed the failure by the tenant to pay the monthly rent of \$1,100 for June 1, 2021. The landlord provided a Proof of Service document that sets

out they served the document by handing it to the tenant in person in the backyard area. The Proof of Service shows that a witness observed that transaction.

On their Application of August 13, the landlord listed an amount of rent owing as \$3,300. This was for the months of June, July, and August. In the hearing, the landlord added the month of September for the total of \$4,400. The landlord provided a subsequent 10-Day Notice for Unpaid Rent to the tenant on July 4, 2021.

The landlord gave detail on the final day of the tenancy, with the tenant moving out on September 27, 2021 at 7:38am. On October 2, the tenant returned to the unit, and because the landlord had previously changed the locks the tenant entered the unit by breaking the kitchen window. The police were involved in this incident.

On the Application, the landlord listed other monetary loss stemming from the tenancy. This is their estimated cost of the use of the washer and dryer by the tenant, to complete what they would do for laundry. Previously, the landlord had discussed increasing the rent amount with the tenant because of the tenant's constant use of the washing and drying machines. The landlord stated this was a difficult issue between the parties because the tenant's laundry use was for their own employment. In the hearing, the landlord stated the machine was now "grinding", indicating malfunction. This claimed amount, as articulated by the landlord in the hearing, is \$3,000 -- \$250 per month to do laundry, from June 2020 to June 2021.

The total amount listed for unpaid rent and the other monetary amount, as written on the landlord's Application, is \$7,700.

Analysis

From the evidence and testimony of the landlord, I am satisfied that an unwritten tenancy agreement was in place. They provided the specific terms of the rent payments as well as the amount the tenant paid for the security deposit. The tenant did not attend the hearing; therefore, there is no evidence before me to show otherwise.

I accept the undisputed evidence before me that the tenant failed to pay the rent owed in full by June 1, 2021, within the five days granted under s. 46(4) of the *Act*. Though the tenant disputed this notice, they did not attend to pursue their Application and I dismissed this without leave to reapply.

Under s. 55 of the Act, when the tenant's Application to cancel a Notice to End Tenancy is dismissed, and I am satisfied the document complies with the requirements under s. 52 regarding form and content, I must grant the landlord an Order of Possession. I find that the 10-Day Notice complies with the requirements of form and content; therefore, I grant the landlord an Order of Possession.

I accept the landlord's evidence that the tenancy effectively ended on September 27, 2021. Because of the nature of the tenancy and based on certain incidents which the landlord presented in the hearing I grant an Order of Possession in line with s. 55(1) of the *Act*. This is a measure of surety for the landlord, to execute or enforce the Order of Possession should the need arise.

I accept the testimony of the landlord that the tenant overheld in the subsequent months in which they did not pay rent: June, July, August, and September. There is no evidence contrary to that of the landlord on these points. I find the landlord subsequently issuing a further 10-Day Notice for unpaid rent is evidence showing further non-payment.

The *Act* s. 55(1.1) provides that I must grant an order requiring the payment of the unpaid rent. In line with this, I grant the rent amount owing of \$4,400 with a Monetary Order.

The landlord's added an amount for the tenant's use of the laundry in the rental unit, for \$3,000. This is a separate monetary claim that is not allowed under s. 55(1.1) where that section is limited to rent amounts only. The landlord did not amend their Application to include this separate monetary piece.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Based on the testimony and evidence of the landlord, I am not satisfied that a damage or loss exists. There is no tangible information concerning the tenant's use of the laundry to such an extreme that compensation to the landlord is warranted. I find the landlord has not proven that a damage or loss exists; therefore, I dismiss this portion of the landlord's claim. I make no award for this.

The *Act* s. 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlord. The landlord has established a claim of \$4,400 for unpaid rent. After setting off the security deposit amount of \$550, there is a balance of \$3,850. I am authorizing the landlord to keep the security deposit and award the balance of \$3,850 as compensation for rent owing.

As the landlord is successful, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

Pursuant to s. 55(1.1) and s. 72 of the *Act*, I grant the landlord a Monetary Order for the recovery of the amounts claimed and the filing fee paid for this application. This amount is \$3,950. The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant 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.

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

Dated: October 7, 2021

Residential Tenancy Branch