



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **CNR-MT, MNDCT, LRE, LAT, OLC**

Introduction

This hearing was scheduled for 1:30 p.m. on this date to deal with a tenant's application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice") among several other remedies.

The landlord appeared for the hearing and was affirmed; however, there was no appearance on part of the tenant despite leaving the teleconference call open until 1:49 p.m.

The landlord confirmed the tenant served him with her proceeding package.

Section 55(1) and (1.1) of the Act provide that I must give the landlord an Order of Possession and Monetary Order for unpaid rent under a tenant's application to dispute the 10 Day Notice. Therefore, I proceeded to consider whether the landlord issued an enforceable 10 Day Notice and whether the landlord is entitled to an Order of Possession and Monetary Order under section 55(1) and (1.1).

I dismissed the balance of the remedies sought by the tenant without leave to reapply given the tenant's failure to appear at the hearing and present a basis and evidence in support of the other remedies she requested.

I amended the tenant's application to strike the name of her minor daughter who was an occupant of the rental unit but not a tenant.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession and Monetary Order for unpaid rent?

Background and Evidence

As provided under the written tenancy agreement, the tenancy started on October 1, 2022. The landlord collected a security deposit of \$665.00 and the tenant was required to pay rent of \$1330.00 on the first day of every month.

The landlord testified that the tenant paid rent for October 2022 and November 2022 but has not paid any rent since then and continues to occupy in the rental unit.

The landlord testified that on December 5, 2022 he served the tenant with a 10 Day Notice by emailing a copy to the tenant and posting a signed copy of the 10 Day Notice to the rental unit door. After serving the tenant, the tenant filed to dispute the 10 Day Notice but she did not pay the outstanding rent.

The landlord seeks an Order of Possession effective as soon as possible.

The landlord also requested a Monetary Order for unpaid rent from December 2022 through April 2023 and authorization to retain the security deposit in partial satisfaction of the unpaid rent.

Documents provided for my review include a copy of the tenancy agreement and 10 Day Notice.

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. The Act provides very limited and specific circumstances where a tenant may legally withhold rent.

I accept the unopposed evidence before me that the tenant was required to pay rent of \$1330.00 on the first day of every month and the tenant failed to do so for the month of December 2022.

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 also accept the unopposed evidence before me that the landlord served the tenant with a signed copy of the 10 Day Notice by posting it to the tenant's door on December 5, 2022 and the tenant did not pay any rent after receiving the 10 Day Notice but the tenant continues to occupy the rental unit. The tenant filed to dispute the 10 Day Notice but the tenant has not presented any basis or evidence to suggest she had a legal reason under the Act to withhold the rent from the landlord. Therefore, I uphold the 10 Day Notice and I dismiss the tenant's request that I cancel the 10 Day Notice.

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

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.

Having upheld the 10 Day Notice and being satisfied the 10 Day notice served to the tenant meets the form and content requirements of the Act, I am satisfied the criteria of section 55(1) have been met. With this decision, I provide the landlord an Order of Possession effective two (2) days after service.

Under section 55(1.1), I further provide the landlord a Monetary Order for the unpaid rent for the months of December 2022 through April 2023, less the security deposit, which I authorize the landlord to retain in partial satisfaction of the unpaid rent.

In light of the above, the landlord is provided a Monetary Order calculated as follows:

Unpaid Rent: Dec 2022 – April 2023 (\$1330.00 x 5)	\$6650.00
Less: security deposit	<u>(665.00)</u>
Monetary Order	\$5985.00

Conclusion

The tenancy has ended for unpaid rent. The tenant's application is dismissed without leave to reapply.

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

The landlord is provided a Monetary Order in the net amount of \$5985.00 under section 55(1.1) of the Act and the landlord is authorized to retain the tenant's security deposit.

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: April 21, 2023

Residential Tenancy Branch