



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, OLC, MNDCT, FFT, OPR, MNR, FFL

Introduction

This hearing was scheduled to deal with cross applications.

The tenant applied for:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice") he received on November 25, 2022;
- Orders for the landlord to comply with the Act, regulations, or tenancy agreement; and,
- Monetary compensation for damages or loss under the Act, regulations, or tenancy agreement.

The landlord applied for an Order of Possession and Monetary Order for unpaid rent.

The landlord and his daughter appeared for the hearing and there were affirmed. There was no appearance on part of the tenant. The landlord informed me that he had witnesses that were waiting to be called to testify. It was unnecessary to call the witnesses during the hearing.

I explored service of the proceeding documents upon each other. The landlord testified that he sent his proceeding package to the tenant via registered mail but he could not locate the registered mail receipt and he did not believe he would be able to find it. Where a party does not appear for a hearing, it is upon the applicant to prove they served the respondent with notification of their claim and notification of the hearing in a manner that complies with the Act. Given the lack of proof of service, I was unsatisfied the landlord met his burden to prove the tenant was served with the landlord's Application for Dispute Resolution and I dismissed it. I dismissed the landlord's application, without leave, since the landlord may obtain an Order of Possession and Monetary Order for unpaid rent under a tenant's application to dispute a 10 Day Notice.

As for the tenant's application, the landlord acknowledged receiving it on his car. Although not properly served, the landlord did receive it and he was prepared to respond to it. Therefore, I deemed the landlord sufficiently served with the tenant's proceeding package.

Since the tenant did not appear to present a basis and evidence for the remedies he sought in his application, and the landlord did appear and was prepared to respond to the tenant's claims, I dismissed the tenant's application without leave to reapply.

Having dismissed the tenant's application to dispute a 10 Day Notice, I proceeded to consider whether the landlord is entitled to an Order of Possession and Monetary Order under section 55(1) and (1.1) of the Act.

Issue(s) to be Decided

Is the landlord is entitled to an Order of Possession and Monetary Order for unpaid rent under section 55(1) and (1.1) of the Act?

Background and Evidence

The landlord testified that the tenancy started on May 1, 2020 and the tenant paid a security deposit of \$750.00. The rent was set at \$1500.00 due on the first day of every month.

The landlord submitted that shortly after the tenancy started the tenant fell behind in rent payments. Since it during the Covid-19 pandemic lockdown, the landlord could not evict the tenant at that time. Rather, the landlord was willing to work with the tenant and take payments in installments. The landlord also stated that the tenant used the security deposit toward a rent payment in 2020, although the landlord did not have any written record of that.

The landlord testified that in 2021 the landlord served the tenant with a 10 Day Notice for unpaid rent. Again, the tenant made some installment payments toward the rental arrears and the landlord did not pursue enforcement of the 10 Day notice. The landlord issued another 10 Day Notice to the tenant in June 2022 and the landlord not pursue enforcement of that 10 Day Notice. The landlord testified that he is afraid of the tenant; however, the rental arrears grew to a significant amount and on November 16, 2022 the

landlord issued the subject 10 Day Notice. The 10 Day Notice indicates rent of \$4600.00 was outstanding and has a stated effective date of December 1, 2022.

The landlord testified that the subject 10 Day Notice was sent to the tenant via registered mail on November 17, 2022. The landlord orally provided the registered mail receipt tracking number which I have recorded on the cover page of this decision. The registered mail was unclaimed by the tenant and returned to sender.

On November 25, 2022 the landlord, along with his daughter, posted a Proof of Service and another copy of the 10 Day Notice to the door of the rental unit. The tenant then filed to dispute the 10 Day Notice.

I noted that in filing the tenant's application, the tenant indicated that the landlord had agreed to lower the monthly rent from \$1500.00 to \$1200.00. The landlord testified that was not true. According to the landlord, it was the tenant that "told" the landlord that he would pay \$1200.00; however, at times the tenant did not even pay that.

After serving the subject 10 Day Notice to the tenant, the landlord received from the Ministry payments toward the rental arrears in the amounts of \$1200.00 in late January 2023 or early February 2023 and \$1358.00 approximately one week ago. In addition to that, the landlord testified that he has received \$1200.00 from the Ministry each month for the month of December 2022 onwards.

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 specific and limited circumstances when a tenant may legally withhold rent or make deductions from rent.

During the initial stages of the Covid-19 pandemic, Ministerial Orders precluded landlords from evicting tenants for unpaid rent incurred up to August 17, 2020 and then landlords were required to accept installment payments toward rental arrears that accrued during that initial period. However, the Ministerial Orders did not extinguish the rental debt accrued and after July 2021 outstanding rent from that initial period became payable.

The landlord testified that the monthly rent was set at \$1500.00 and based on the tenant's application it appears to me that it was set at that amount when the tenancy commenced. The tenant submitted the landlord agreed to reduce the rent from \$1500.00 to \$1200.00 per month; however, the landlord denied that and the tenant did not appear at the hearing to present evidence in support of his position. Therefore, I find the monthly rent remained as set out when the tenancy started, at \$1500.00 per month.

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.

The landlord submitted the 10 Day Notice was served to the tenant by registered mail sent on November 17, 2022. Section 90 of the Act deems a person to be in receipt of a document sent to them five days after mailing, even if the person refuses to accept or pick up their mail. The landlord further submitted that the tenant was given another copy of the 10 Day notice by posting it to his door on November 25, 2022 which the tenant acknowledged receiving in filing his Application for Dispute Resolution. Therefore, I find the tenant has been and/or is deemed served with the 10 Day Notice.

In this case, the 10 Day Notice indicates rent of \$4600.00 was outstanding and I heard that this was not paid within five days of the tenant receiving the 10 Day Notice. The tenant did file to dispute the 10 Day Notice but as I already stated, the tenant did not appear to present evidence in support of a legal reason to not pay the rent indicated on the 10 Day Notice and I have dismissed the tenant's application.

Section 55 of the Act provides 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.

Upon review of the 10 Day Notice, I find it is the approved form and is duly completed. I have dismissed the tenant's application for cancellation of the 10 Day Notice. Therefore, find the landlord is entitled to an Order of Possession under section 55(1) of the Act. Provided to the landlord with this decision is an Order of Possession effective two (2) days after service.

Based on the 10 Day Notice, I find the tenant owed \$4600.00 in November 2022 and the landlord acknowledged receiving two payments toward the rental arrears after the 10 Day Notice was issued, in the amounts of \$1200.00 and \$1358.00. The landlord has also acknowledged receipt of \$1200.00 in rent for the months of December 2022 onwards as partial payment of rent for the months the tenant has remained in the rental unit. Therefore, I find the landlord is entitled to a Monetary Order for unpaid rent under section 55(1.1) of the Act in the amount calculated below:

| | |
|--|------------------|
| Rental arrears per November 2022 10 Day Notice | \$4600.00 |
| Less: payments toward rental arrears | (1200.00) |
| | <u>(1358.00)</u> |
| Sub-total | \$2042.00 |
| Plus unpaid rent: December 2022 – April 2023 | |
| \$1500.00/mo x 5 months | 7500.00 |
| Less: payments of \$1200/mox 5 months | <u>(6000.00)</u> |
| Monetary Order for landlord for unpaid rent | \$3542.00 |

I make no finding as to whether the security deposit was used toward rent in 2020 as evidence is lacking. If the parties are in dispute concerning the security deposit, they may make another Application for Dispute Resolution for resolution. Any security deposit remaining in trust must be dealt with in a manner that complies with section 38 of the Act.

Conclusion

The landlord's application is dismissed.

The tenant's application is also dismissed; however, the landlord is provided an Order of Possession and Monetary Order under section 55(1) and (1.1) of the Act. The Order of Possession is effective two (2) days after service. The Monetary Order is in the amount of \$3542.00.

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 06, 2023

Residential Tenancy Branch