



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing occurred by conference call based on an Application for Dispute Resolution filed by the Tenant December 05, 2022 (the “Application”). The Tenant applied:

- To dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 29, 2022 (the “Notice”)

The Landlord appeared at the hearing. The Tenant did not appear at the hearing, which lasted 18 minutes. I explained the hearing process to the Landlord. I told the Landlord they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Landlord provided affirmed testimony.

The Landlord confirmed receipt of the hearing package and Tenant’s evidence.

The Landlord said they posted their evidence on the Tenant’s door April 03 or 04, 2023.

Based on the undisputed testimony of the Landlord, I am satisfied the Tenant was served with the Landlord’s evidence in accordance with section 88(g) of the *Residential Tenancy Act* (the “Act”). Under section 90(c) of the *Act*, the Tenant is considered to have received the evidence April 06 or 07, 2023. The Landlord served their evidence one or two days late; however, I admit the evidence because the Tenant did not appear at the hearing to raise this as an issue.

I proceeded with the hearing. The Landlord was given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. Is the Landlord entitled to an Order of Possession based on the Notice?
3. Is the Landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

The Notice was submitted by the Tenant. The Notice states that the Tenant failed to pay \$1,000.00 in rent due November 02, 2022.

The Landlord testified as follows.

There is a verbal tenancy agreement between the parties. The Tenant rents a room and rent is \$500.00 per month due on the first day of each month.

The Notice was served on the Tenant in person November 29, 2022.

The Tenant did not pay October rent.

The Landlord paid the Tenant \$500.00 to move out of the rental unit; however, the Tenant did not move out. The Tenant now owes the Landlord the \$500.00 paid.

Given the above, the Tenant owed the Landlord \$1,000.00 when the Notice was issued.

The next rent payment received after the Notice was issued was \$500.00 December 17, 2022, for January rent.

The Tenant currently owes:

- \$500.00 for October rent
- \$500.00 for December rent
- \$500.00 for April rent
- The \$500.00 the Landlord paid the Tenant to move out

The Tenant has never had authority under the *Act* to withhold rent.

The Landlord wants an Order of Possession effective two days after service on the Tenant.

The Landlord provided documentary evidence.

Analysis

Section 26(1) of the *Act* requires a tenant to pay rent in accordance with the tenancy agreement unless they have a right under the *Act* to not pay rent.

Section 46 of the *Act* allows a landlord to end a tenancy when a tenant does not pay rent. Section 46 states:

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...

I accept the undisputed testimony of the Landlord and based on it, as well as the documentary evidence, I find the following.

The Tenant is required to pay \$500.00 in rent per month by the first day of each month given the verbal tenancy agreement between the parties.

The Tenant did not pay October rent. The Tenant did not have authority under the *Act* to not pay rent. The Landlord was allowed to issue the Notice.

The Notice was properly served on the Tenant and they received it November 29, 2022.

The Notice complies with section 52 of the *Act* in form and content. I do not accept that the Landlord was allowed to include the \$500.00 they say the Tenant owed them due to an agreement between the parties about the Tenant moving out of the rental unit because this is not rent. However, the Landlord was allowed to issue the Notice for outstanding October rent in the amount of \$500.00. The difference in amounts on the Notice does not make the Notice invalid.

The Tenant had five days from receipt of the Notice to pay the \$500.00 outstanding for October rent or dispute the Notice.

The next rent payment made was on December 17, 2022, long after the five-day time limit.

The Tenant disputed the Notice but did not appear at the hearing to provide a basis for the dispute.

I find the Notice valid and uphold the Notice. I dismiss the Tenant's dispute of the Notice. The Tenant's dispute is also dismissed given rule 7.3 of the Rules.

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...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.

The Landlord is entitled to an Order of Possession under section 55 of the *Act* and is issued one effective two days after service on the Tenant.

The Landlord is entitled to the following unpaid rent:

- \$500.00 for October rent
- \$500.00 for December rent
- \$317.00 for April rent (daily rent for April 01 to April 19, 2023)
- **Total = \$1,317.00**

The Landlord cannot recover the \$500.00 they paid the Tenant to move out of the rental unit on this Application because this amount is not rent.

The Landlord is issued a Monetary Order for \$1,317.00 under section 55 of the *Act*.

Conclusion

The Landlord is issued an Order of Possession effective two days after service on the Tenant. This Order must be served on the Tenant and, if the Tenant does not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

The Landlord is issued a Monetary Order in the amount of \$1,317.00. This Order must be served on the Tenant and, if the Tenant does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 Section 9.1(1) of the *Act*.

Dated: April 17, 2023

Residential Tenancy Branch