



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding MAXSAVE REAL ESTATE SERVICES LTD.
(AGENT) and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, CNR

Introduction

This hearing was scheduled to deal with a tenant's application for cancellation of a One Month Notice to End Tenancy for Cause ("One Month Notice") dated November 24, 2022.

Both parties appeared and/or were represented at the hearing.

I confirmed the tenant had served the landlord with the proceeding package.

I have amended the tenant's application to correctly name the landlord, as seen on the One Month Notice.

I noted that the tenant had subsequently uploaded a copy of a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") dated February 6, 2023 but an Amendment was not submitted. The tenant indicated that she wanted to dispute the 10 Day Notice but was unaware she had to submit/serve an Amendment. The landlord's agent confirmed she was not notified that the tenant was disputing the 10 Day Notice but the landlord was prepared to deal with the 10 Day Notice during this proceeding. Accordingly, I also permitted the tenant's application to be amended during the hearing, as permitted under Rule 4.2 of the Rules of Procedure.

The tenant requested an adjournment, claiming she is feeling unwell because her mother is unwell and the tenant needs to drive to see her mother. I denied the adjournment request as there was no corroborating evidence so suggest the tenant could not wait to drive to see her mother after the hearing. Further, I found the tenant was able to understand and answer questions I posed to her. Finally, the tenant admitted that she had not paid rent for a number of months and I was of the view that to delay the proceeding would be highly prejudicial to the landlord.

On another procedural note, the landlord informed me that she had filed a Landlord's Application for Dispute Resolution and the landlord requested that application be withdrawn since the landlord was receiving an Order of Possession and Monetary Order for unpaid rent under this proceeding, for reasons explained later in this decision. I have closed the landlord's file, as requested.

Issue(s) to be Decided

1. Should the 10 Day Notice be upheld or cancelled?
2. Should the One Month Notice be upheld or cancelled?
3. Is the landlord entitled to an Order of Possession and/or Monetary Order for unpaid rent?

Background and Evidence

The tenancy started in November 2017 and the tenant paid a security deposit of \$350.00. The rent was initially set at \$720.00 payable on the first day of every month. The rent is currently \$744.00 after increases.

In February 2022, the owners authorized the current property manager to manage the property and the tenancy.

On November 26, 2022 the landlord served the tenant with a One Month Notice to End Tenancy for Cause, which the tenant filed to dispute.

The landlord submitted that the last rent payment received for the tenant was on November 24, 2022, for December 2022 rent. The landlord testified that receipts are issued for each rent payment received and the landlord provided the receipt number for the November 24, 2022 payment. The rent for January 2023 was not received. Then rent for February 2023 was not received.

The landlord testified that on February 6, 2023 the landlord posted all three pages of the subject 10 Day Notice on the door of the rental unit. The tenant acknowledged receiving the 10 Day Notice in the door jam.

The 10 Day Notice indicates rent of \$1488.00 was outstanding as of February 1, 2023. The landlord submitted that the tenant did not pay the outstanding rent after the 10 Day

Notice was served; however, the tenant continues to occupy the rental unit and no rent has been received for March 2023 or April 2023 either.

The tenant testified that after receiving the 10 Day Notice she submitted it to the Residential Tenancy Branch but the tenant did not pay the outstanding rent.

The tenant testified that she was unaware the landlord did not receive rent for January 2023 since the rent was ordinarily paid by the Ministry; however, the tenant also admitted that she instructed the Ministry to stop sending rent to the landlord and to give it to her instead. The tenant acknowledged that she is aware the rent had not been paid for February 2023, March 2023 and April 2023.

The tenant's basis for disputing the 10 Day Notice is that she thought she could withhold rent since the parties were in dispute about the One Month Notice. The tenant stated she has picked up the rent money from the Ministry and gave it to a friend to hold since she saw no point in paying rent to the landlord if the landlord is going to evict her. The tenant indicated that she is mostly packed and prepared to move out of the rental unit shortly.

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 withhold rent, legally. Being in dispute with one's landlord over the merits of a One Month Notice is not a legal basis for withholding rent.

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 tenant did not pay the outstanding rent and did not present a valid basis for not paying rent. I find the landlord's testimony, including a receipt number and date for the last rent payment received for the tenant, to be more credible than the tenant's uncertainty over the rent payment for January 2023. Plus, I find the receipt of the One Month Notice and the tenant's testimony that she saw no point in paying rent if she was

going to be evicted to be consistent with stopping the rent payment for January 2023. Therefore, I find it more likely than not that the rent was not received for the month of January 2023 onwards.

I see no reason to grant the tenant's request for cancellation of the 10 Day Notice under the Act and I uphold the 10 Day Notice. Therefore, I find the tenancy has ended due to unpaid rent.

Having upheld the 10 Day Notice, I find it unnecessary to further consider the merits of the One Month Notice. Therefore, I dismiss the tenant's application in its entirety.

Section 55(1) and (1.1) 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.

In this case, I have dismissed the tenant's application to cancel the 10 Day Notice. Upon review of the 10 Day Notice, I am satisfied that it meets the form and content requirements of section 52 of the Act. Accordingly, I find the criteria of section 55(1) have been met and the landlord is entitled to an Order of Possession. I provide the landlord with an Order of Possession effective two days after service.

I further find the landlord entitled to recover unpaid rent for the months of January 2023 through April 2023, the period of time the tenant has occupied the rental unit and not paid rent. I provide the landlord with a Monetary Order in the sum of, \$2976.00 [\$744.00 x 4 months] under section 55(1.1) of the Act.

Conclusion

The tenant's application is dismissed. The landlord is provided an Order of Possession effective two days after service under section 55(1) of the Act. The landlord is also provided a Monetary Order in the sum of \$2976.00 under section 55(1.1) 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 *Residential Tenancy Act*.

Dated: April 13, 2023

Residential Tenancy Branch