



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **CNR, MNDCT, RR, RP, FFT, OPR-DR, FFL**

Introduction

This hearing was convened in response to applications by the tenant and the landlord.

The tenant's application is seeking orders as follows:

- To cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice");
- For a Monetary Order for compensation of a monetary loss or other money owed;
- For a Monetary Order to reduce rent for repairs, services or facilities agreed upon but not provided;
- For an Order for repairs to the unit, site or property; and
- To recover the cost of filing this application.

The landlord's application is seeking orders as follows:

- For an Order of Possession based on unpaid rent;
- For a Monetary Order for unpaid rent; and
- To recover the cost of filing the application.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated claims. I considered only the tenant's request to cancel the 10 Day Notice and to recover the cost of filing the application. The tenant's other claims are dismissed with leave to re-apply. As the landlord's Notice is directly related, I will consider it.

Both the tenant and the landlord's agents attended the hearing. As both parties were present, service was confirmed.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled?

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

Evidence was provided showing that this tenancy began on August 1, 2022, with a monthly rent of \$5,100.00, due on first day of the month, with a security deposit in the amount of \$2,500.00.

The 10 Day Notice was left in the tenant's mailbox on August 2, 2023. The tenant testified that they received it on August 2, 2023.

The Notice was entered into evidence by both parties for unpaid rent in the amount of \$5,100.00 due on August 1, 2023. Signed and dated August 2, 2023, with an effective date of August 12, 2023.

Both parties testified that the amount owing was \$600.00 for August 2023 rent, \$1,204.10 for September 2023 rent, and \$1,100.00 for October 2023 rent for a total of \$2,904.10.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 46 of the Act states that upon receipt of a 10 Day Notice, the tenant must, within five days, either pay the full amount of the arrears as indicated on the 10 Day Notice or dispute the 10 Day Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant(s) do not pay the arrears or dispute the 10 Day Notice they are conclusively presumed to have accepted the end of the tenancy under section 46(5).

Section 55(1.1) of the Act states that if a tenant makes an application to set aside a landlord's notice to end a tenancy under section 46 of the Act for non-payment of rent, and the application is dismissed, the Arbitrator must grant the landlord an order requiring the repayment of the unpaid rent if the notice complies with section 52 of the Act.

Both parties agreed that \$2,904.10 was the outstanding rent amount.

I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the Act, effective two days after service on the tenants. This order may be filed in the Supreme Court and enforced as an order of that Court. The tenants are cautioned that costs of such enforcement are recoverable from the tenants.

I find that the landlord is entitled to a Monetary Order for the unpaid rent and late fees, pursuant to section 55 (1.1) of the Act and section 7(1) (d) and 7 (2) of the Regulation in the amount of \$2,979.10 and \$100.00 to recover the cost for filing for the total amount of \$3,079.10.

I order that the landlord retain the security deposit of \$2,500.00 in partial satisfaction of the claim and I grant the landlord an Order under section 55 of the Act for the balance due of \$579.10. This Order may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court. The tenant is cautioned that costs of such enforcement are recoverable from the tenant.

Conclusion

The tenants' application is dismissed. The landlord is granted an Order of Possession and a Monetary Order as stated above.

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: October 13, 2023

Residential Tenancy Branch