



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, CNR, MNR, MNDC

Introduction

The landlord and the tenant convened this hearing in response to applications.

The landlord's application is seeking orders as follows:

1. For an order of possession;
2. For a monetary order for unpaid rent; and
3. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice");
2. For a monetary order for money owed or compensation for damages; and
3. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant's request to set aside the Notice to End Tenancy. The balance of the tenant's application is dismissed with leave to reapply.

Issues to be Decided

Should the Notice be cancelled?

Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The tenancy began on September 24, 2016. Rent in the amount of \$3,000.00 was payable on the first of each month. A security deposit was not paid by the tenant as required.

The parties agreed the tenant was served with the Notice, issued on March 21, 2017, and received on March 23, 2017.

The landlord testified that at the time the Notice was issued the tenant was in rent arrears of \$8,650.00. The landlord stated that this amount was for \$650.00 owing for November 2016, all rent for January 2017, February 2017, and a prorated rent for March 2017. The landlord stated the tenant did not pay the outstanding rent and rent for April 2017 and May 2017 have not been paid. The landlord seeks a monetary order for unpaid rent in the amount of \$15,650.00 and an order of possession.

The tenant testified that they paid rent for December 2016, as they left cash with the concierge. The tenant stated that they paid rent for February 2017, as they gave the landlord a certified cheque. The tenant does not deny rent for March 2017, April 2017 and May 2017, have not been paid.

The landlord responded that the rent paid on February 8, 2017, was applied toward outstanding rent for December 2016, which they have not claimed. The landlord denied received cash from the concierge.

Analysis

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

Although the tenant applied to cancel the Notice within five days, I find the tenant's application to cancel the Notice is without merit, as the tenant acknowledged that the full amount of rent was not paid.

Further, I do not accept the tenant's version that they paid the rent for December 2016, to the concierge. The tenant provided no evidence of payment, such as having the concierge testify on their behalf that they received this money and gave it to the property owner; I find it highly unlikely that they would accept such money on behalf of the landlord.

Further, I accept the payment in the amount of \$3,000.00 was paid in February 2017. The landlord applied that amount towards outstanding December 2016, rent, which the landlord has not claimed for at the hearing.

Section 26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I find the tenant has breached the Act, when they failed to pay rent. I find the tenant did not comply with the Notice by paying the full amount of rent owed within 5 days after receiving the Notice. I find the Notice is a valid Notice under the Act. Therefore, I dismiss the tenant's application to cancel the Notice issued on March 21, 2017.

Since the tenant was not successful, I decline to award the tenant the recovery of the filing fee.

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 tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

I find that the landlord has established a total monetary claim of **\$15,750.00** comprised of unpaid rent for November 2016, January 2017, February 2017, March 2017, April 2017 and May 2017, and the \$100.00 fee paid by the landlord for this application.

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 tenant failed to pay rent. The tenant's application to cancel the Notice is dismissed. The landlord is granted an order of possession and a monetary order.

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: May 03, 2017

Residential Tenancy Branch