



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR ERP, OPR, MNR, MNSD, FF

Introduction

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

The landlord's application is seeking orders as follows:

1. For an order of possession for unpaid rent;
2. For a monetary order for unpaid rent;
3. To keep all or part of the security deposit; and
4. 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; and
2. To make repairs to the rental unit.

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.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to relevant facts and issues in this decision.

Issue to be Decided

Should the Notice be cancelled?

Is the landlord entitled to an order of possession?
Is the landlord entitled to a monetary order for unpaid?
Is the landlord entitled to keep all or part of the security deposit?

Background and Evidence

The tenant testified that they received the Notice on July 3, 2017. The tenant stated that rent was not paid in full within 5 days. The tenant stated that the Notice is incorrect as they paid May rent; however, June, July, August and September 2017, have not been paid. Filed in evidence is a receipt issued June 2, 2017 for May 2017.

The landlord testified that rent for May 2017 was not paid. The landlord stated that although the receipts states rent for May, it was simply an error on their part as it was actually for unpaid April 2017. Filed in evidence is a rent ledger.

Analysis

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

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

Rules about payment and non-payment of rent

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.

...

How to end a tenancy is defined in Part 4 of the Act.

Landlord's notice: non-payment of rent

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 [form and content of notice to end tenancy].

...

(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.

Upon review of the Notice, I find the Notice is completed in accordance with the requirements of section 52 of the Act.

Under the legislation the tenant may dispute the Notice for specific reasons, such as they have proof that their rent was paid or that the tenant had the right under the Act to deduct all or a portion from their rent, such as an order from an Arbitrator.

Although the tenant filed an application for dispute resolution within the time limit permitted under the Act, I find the tenant's application had no merit as the tenant admitted rent in full was not paid within 5 days after receiving the Notice. Therefore, I dismiss the tenant's application without leave to reapply.

As the tenant's application is dismissed and the landlord requested an order of possession pursuant to section 55 of the Act, I must grant this request.

Order of possession for the landlord

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.

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 accept the evidence of the landlord's over the tenant's that the receipt issued on June 2, 2017, was rent for April 2017, and that it was simply an administrative error when they wrote May on the receipt. This is supported by the earlier receipt issued in April 2017, which shows that rent was for March 2017 rent and April and May 2017, were outstanding. I find it highly unlikely that the tenant made an additional payment of \$905.00 during this time.

I find that the landlord has established a total monetary claim of \$4,625.00 comprised of unpaid rent for May, June, July, August and September 2017 and the \$100.00 fee paid by the landlord for this application.

I order that the landlord retain the security deposit of \$500.00 in partial satisfaction of the claim and I grant the landlord an order pursuant to section 67 of the Act, for the balance due of **\$4,125.00**. 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 is dismissed

The landlord is granted an order of possession, and may keep the security deposit and interest in partial satisfaction of the claim. I grant a monetary order for the balance due.

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: September 13, 2017

Residential Tenancy Branch