



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF (Tenant's Application)
 OPR, MNR, FF (Landlord's Application)

Introduction

This hearing convened as a result of cross applications. In the Tenant's Application for Dispute Resolution, filed February 9, 2018, the Tenant sought to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on February 2, 2018 (the "Notice") as well as an Order that the Landlord comply with the *Residential Tenancy Act*. In the Landlord's Application filed on March 20, 2018, the Landlord sought an Order of Possession and Monetary Compensation for unpaid rent based on the Notice as well as recovery of the filing fee and authority to retain the Tenant's security deposit.

The hearing was conducted by teleconference on April 16, 2018. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. Is the Landlord entitled to an Order of Possession?

3. Is the Landlord entitled to monetary compensation from the Tenant?
4. What should happen with the Tenant's security deposit?

Background and Evidence

Residential Tenancy Branch Rules of Procedure provide that when a Tenant applies to cancel a notice to end tenancy, the Landlord must present their case first as they bear the burden of proving the reasons for ending the tenancy.

The Landlord testified that this tenancy began November 1, 2017. Monthly rent was payable in the amount of \$550.00 and the Tenant paid a \$275.00 security deposit.

The Tenant failed to pay rent for January 2018 and February 2018. In response, the Landlord issued the Notice on February 2, 2018 indicating the amount of \$1,100.00 was owed for rent. The Landlord stated that the Tenant was served the Notice by Registered Mail.

The Landlord confirmed that the Tenant did not pay the outstanding rent, nor did she pay rent for March or April 2018, such that at the time of the hearing the amount of rent owed is \$2,200.00.

S.A. also testified. She confirmed that the Notice was served by registered mail on February 2, 2018. S.A. confirmed that the Tenant signed for the registered mail on February 7, 2018.

The Tenant applied for dispute resolution on February 9, 2018.

The Tenant also testified. She confirmed that her monthly rent is \$550.00. She also confirmed that she has not paid rent for February, March and April although she claimed that she paid the January rent at the end of December 2017. She did not provide any documentary evidence to support this claim.

The Tenant initially stated that her family member was holding her rent; she then claimed she paid her rent and that she and the Landlord were victims of the same person.

Analysis

Based on the testimony of S.A. I find that the Landlord served the Notice on the Tenant by registered mail sent on February 2, 2018. Section 90 of the *Act* provides that documents served in this manner are deemed served five days later; accordingly, I find the Tenant was served with the Notice as of February 7, 2018.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, February 12, 2018. The Notice also explains the Tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

I accept the Landlord's testimony that the Tenant failed to pay rent for January, February, March and April 2018. While the Tenant claimed to have paid her January rent at the end of December 2017, she failed to provide any documentary evidence to support this claim.

Further, although the Tenant applied to dispute the Notice within the five days required by the *Act*, I find she has failed to prove that she had a legal reason for withholding rent. Pursuant to section 26 of the *Act*, the Tenant must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the *Act*, unless the Tenant has some authority under the *Act* to not pay rent. In this situation the Tenant had no authority under the *Act* to not pay rent. I therefore dismiss the Tenant's application to cancel the Notice.

The Landlord is entitled to an Order of Possession effective **two (2) days** after service on the Tenant. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

I find that the Landlord has established a total monetary claim of \$2,300.00 comprised of \$2,200.00 in outstanding rent and the \$100.00 fee paid by the Landlord for this application.

I order that the Landlord retain the security deposit of \$275.00 in partial satisfaction of the claim and I grant the Landlord an Order under section 67 for the balance due of \$2,025.00. This Order may be filed in the Provincial Court (Small Claims Division) and enforced as an order of that Court.

Conclusion

The Tenant failed to pay rent and her application to dispute the Notice is denied.

The Landlord is granted an Order of Possession, may keep the security deposit and interest in partial satisfaction of the claim, and is granted a Monetary Order for the balance due.

This Decision is final and binding on the parties, except as otherwise provided under the Act, and 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 17, 2018

Residential Tenancy Branch