



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNDC, FF

Introduction

The landlord and the tenant convened this hearing in response to four(4) separate applications, the issues of the applications have been combined.

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"), issued on April 17, 2018 (the "Notice");
2. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent, received on May 2, 2018; and
3. For a monetary order for money owed or loss under the Act.

Both parties appeared, gave 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.

Preliminary and Procedural matter

Tenant's application

In this case the tenant submitted a second application on May 9, 2018; however, no notice of hearing was produced and the landlord did not receive the amendment that

was attached to that file. Therefore, I decline to hear the matters that are subject to the file submitted on May 9, 2018, which are listed as number 2 and 3. Therefore, I dismiss these with leave to reapply.

The tenant has listed RD as a tenant in the application; however, RD is not a tenant under the tenancy agreement. The tenant rents a room to RD to help by the rent. I find RD is not a tenant. Therefore, I have removed RD from the style of cause.

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 a monetary order for unpaid rent?

Background and Evidence

The tenant testified that they received the Notice on April 17, 2018. The tenant stated that they dispute rent was owed at the time the Notice was issued and file an application to dispute it.

The tenant testified that in January 2018, they paid a sum of \$5,000.00 to the landlord for advance rent payments. The tenant stated that out of that advance payments the landlord had taken out the water bills, which the bills were extremely high due to a water leak.

The landlord's agent testified that there was a toilet running in the rental unit and they discovered there was a leak under the foundation. The agent stated that the no water payments came out of the tenant's advance payment of rent.

The landlord's agent testified that when the \$5,000.00 payment was made in January 2018, the tenant then had a credit of \$4,993.19. The agent stated that the only other payments the tenant made prior to the issuance of the Notice were on April 4, 2018 the amount of \$539.99, and on April 10, 2018 the amount of \$123.00. After deducting rent

of \$1,600.00 per month for January, February, March, and April 2018, this left a short fall of rent for April 2018, in the amount of \$743.82. **(\$6,400.00 - \$5,656.18=\$743.82)**

The landlord seeks a monetary order and an order of possession. The agent stated that if the balance owed were paid forthwith, they would not enforce the order of possession until the end of June 2018.

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 tenants has failed to prove rent was paid as the three payments made for rent in 2018, do not add up to the total rent due; there is a shortage of \$743.82. This amount was not paid within 5 days after receiving the Notice and remains outstanding. Therefore, I dismiss the tenant's application without leave to reapply.

Since I have dismissed the tenant's application the landlord is entitled to an order of possession, pursuant to section 55 of the Act.

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 find that the landlord has established a total monetary claim of **\$843.82** comprised of unpaid rent and the \$100.00 fee paid for this application.

As the tenant indicated that they would pay the balance owed in order to be allowed to stay until the end of June 2018. I find it not appropriate to offset the above amount with the security deposit or pet damage deposit at the hearing. Since the monetary order would have no force or effect if paid.

However, should the tenant not pay the monetary order as indicated, I find the landlord has the right to retain the above amount from the security deposit and pet damage deposit should that monetary amount not be paid at the end of the tenancy pursuant to section 38(3)(a)(b) of the Act.

Conclusion

The tenant's application is dismissed. The landlord is granted an order of possession and a monetary order for unpaid rent.

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: June 20, 2018

Residential Tenancy Branch