



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, ERP, FFT
OPRM, MNRL-S, FFL

Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Tenant requesting the cancellation of a 10-Day Notice to End Tenancy for Unpaid Rent, an order for emergency repairs and payment of the \$100.00 filing fee. The Landlord filed a cross-application to obtain an Order of Possession, a monetary order for rent arrears, retention of the security deposit and the filing fee.

The Landlord’s representative, KT, appeared for the scheduled hearing (hereinafter referred to as “Landlord”). The Tenant did not appear for the hearing; I left the telephone conference line open for 24 minutes past the scheduled hearing time and confirmed that the Landlord and I will be the only participants on the call and that the proper telephone numbers were listed in the Notice of Hearing. I find that the Notice of Hearing was properly served on both parties and that evidence was properly submitted by the Landlord and served on the Tenant.

The hearing process was explained and the participant was given an opportunity to ask any questions about the process. The participant was given a full opportunity to present affirmed evidence and to make submissions on the relevant evidence provided in this hearing.

Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is considered and discussed in this decision.

Issues to be Decided

Is the Tenant entitled to a cancellation of the Notice to End Tenancy, pursuant to section 46 of the *Residential Tenancy Act* ("Act")?

If not, is the Landlord entitled to an Order of Possession, pursuant to section 55 of the Act?

Is the Tenant entitled to an Order for emergency repairs, pursuant to section 33 of the Act?

Is either party entitled to payment of the filing fee, pursuant to section 72 of the Act?

Background and Evidence

This tenancy began January 1, 2018 with agreed monthly rent of \$2,200.00; a security deposit of \$1,100.00 was paid.

The Landlord states that the Tenant only paid \$700.00 for the month of March, leaving a balance of \$1,500.00. The April and May rent also became due and owing. The 10-Day Notice to End Tenancy dated May 2, 2018 was posted on the Tenant's door that same day; a witness confirms the Tenant picked it up off the door that day. A text message sent later that day confirmed that the Tenant had received the notice from her door.

The Tenant's Application requests that the 10-Day Notice to End Tenancy be cancelled so that the tenancy can continue, claiming that the Landlord failed to provide receipts for the rent. She applied on May 8, 2018, six days after the Notice was delivered to her. The Tenant also claimed in her Application that there is water dripping from the upstairs floor to the basement suite bathroom which requires immediate attention, and she applied for emergency repairs.

The Landlord states that the Tenant agreed to make payments towards her arrears. She has since paid all of March arrears, the April rent and \$1,600.00 towards the May rent; nothing has been paid for June. The Landlord states that she informed the Tenant that the hearing would proceed as there is still \$2,800.00 in arrears.

Analysis

Rule 7.3 of the Residential Tenancy Branch Rules of Procedure states if a party or their agent fails to attend a hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the Application, with or without leave to re-apply. The Tenant did not appear for the hearing, nor did she submit any documentary evidence in support of her Application. I am satisfied that she had notice of the hearing which was scheduled to address both her Application and the cross-application, and she chose not to attend; the hearing continued in her absence.

Under section 46 of the Act, a landlord may end a tenancy if rent is unpaid; the notice must comply with section 52 for form and content. I have reviewed the Notice to End Tenancy and find that the Landlord has used the proper form to provide notice. Under section 46(4), a tenant has the option of paying the overdue rent or disputing the notice by making an application; this must be done within 5 days of being served the notice.

The Landlord states the notice was posted on the door and that she and a witness drove by the house as the Tenant was retrieving the package on May 2; they had a discussion with the Tenant about the notice, in text messages that followed. I find that based on the facts, the Tenant was served with the notice on May 2 and that she had until Monday, May 7th to file a dispute notice or to pay the arrears. As she did neither, she is deemed to have accepted that the tenancy ends on the date in the notice, which was May 12, 2018, pursuant to section 46(5). In any event, the Tenant did not appear for her scheduled hearing to dispute the notice and present evidence as to why the notice ought to be cancelled.

Accordingly, the Notice to End Tenancy is valid and binding and the tenancy is ended; the Landlord is granted an Order of Possession. The application for emergency repairs is moot as the tenancy is over, and therefore I dismiss the Tenant's Application.

The Landlord has applied for a monetary order to pay the rent arrears and for the filing fee. In addition, the Landlord asks to apply the security deposit of \$1,100.00 towards the monetary award. As the Landlord was successful in her Application, I am prepared to award the filing fee. I find that there is sufficient evidence to show that the Tenant owes the following:

Item	Amount
Unpaid Rent - March	0
Unpaid Rent - April	0

Unpaid Rent - May	600.00
Unpaid Rent - June	2,200.00
Less Security Deposit	(1,100.00)
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$1,800.00

The Landlord was cautioned that in the event that further payments are made by the Tenant prior to receiving this decision, the amounts received must be applied towards the amount awarded herein, resulting in a new balance owing.

This Order must be served on the Tenant and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Tenant fails to make payment. Copies of this order are attached to the Landlord's copy of this Decision.

Conclusion

The Landlord is entitled to retain the security deposit of \$1,100.00 in partial satisfaction of the monetary award. The Tenant shall pay the balance to the Landlord in the amount of \$1,800.00.

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 22, 2018

Residential Tenancy Branch