



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR OPR

Introduction:

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:11 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:00 a.m. on June 26, 2018. The landlord's authorized representative and the landlord attended the hearing and gave sworn testimony. They were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord/tenant and I were the only ones who had called into this teleconference.

Both parties attended the hearing and gave sworn testimony. The landlord said they served the tenant with a 10 Day Notice to End the Tenancy for non-payment of rent dated May 2, 2018 to be effective May 12, 2018 by posting it on the door on May 2, 2018. They confirmed the tenant served the landlord with their Application for Dispute dated May 3, 2018 at their workplace. I find the documents were legally served for the purposes of this hearing. The tenant applies pursuant to *The Residential Tenancy Act* (the Act):

- a) to cancel the Notice to End Tenancy pursuant to section 46;
- b) To order the landlord to comply with section 29 of the Act regarding entry into their unit.
- c) To recover filing fees for this application.

Issues: Is the tenant entitled to any relief?

Background and Evidence:

Only the landlord attended the hearing and was given opportunity to be heard, to provide evidence and to make submissions. They provided evidence that the tenancy began in November 2017, rent was \$1600 a month and a security deposit of \$800 was paid. They said the tenant paid rent until February 2018 but then started having

problems. As of May 1, 2018, the tenant owed \$2200 and they vacated the unit on May 31, 2018 without paying the amount owed.

The landlord requests I dismiss the Application of the tenant as they have vacated and provide them with a monetary order for the outstanding rent less the security deposit they have in trust.

Analysis:

The Notice to End a Residential Tenancy is based on non-payment of rent. The Residential Tenancy Act permits a tenant to apply to have the Notice set aside where the tenant disputes that rent is owed or where the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from the rent. Although the tenant disputed the Notice in time, she did not attend the hearing to provide evidence as to why the Notice should be set aside and vacated the premises on May 31, 2018. I therefore dismiss her application to cancel the Notice to End the Tenancy. Section 55(1) (a) provides that the arbitrator must grant an order of possession of the rental unit at a hearing where an arbitrator has dismissed the tenant's application pursuant to section 46 and has upheld the Notice. However, I find the landlord does not require an Order of Possession as the tenant has vacated.

Section 55(4) of the Act provides in these circumstances an arbitrator may grant an order requiring payment of that rent. I find the landlord entitled to a monetary order for \$2200 for the unpaid rent. I find they may retain the security deposit to offset the amount owing.

Conclusion:

I dismiss the tenant's application without recovery of the filing fee. I find the landlord entitled to a monetary order to recover the unpaid rent and to retain the security deposit to offset the amount owing. As a result, I find the landlord entitled to a monetary order for \$1400 (\$2200- 800).

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 26, 2018

Residential Tenancy Branch