



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR OPR FFT

Introduction:

Both parties attended the hearing and gave sworn testimony. The landlord said they served the tenant personally with two 10 Day Notices to End the Tenancy for non-payment of rent, one dated March 28, 2019 and the second dated April 2, 2019 both to be effective April 7, 2019. The tenant said they served the landlord personally with their Application for Dispute Resolution dated March 30, 2019. The parties acknowledged receipt of the documents. The tenant applies pursuant to section 46 of *The Residential Tenancy Act* (the Act) to cancel the Notice to End Tenancy and to recover the filing fee for this application.

Issues: Is the tenant entitled to any relief?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The tenant objected to a daughter, B.S., representing the male landlord. He said J.G. who is another daughter of the landlord lived upstairs in the unit, J.G. is the named landlord on his lease and he paid his rent to her, although she put her father's name as the landlord on the Notices to End Tenancy. The landlord's other daughter, B.S., and the landlord, K.S., attended the hearing and explained the situation. They said the landlord, K.S., was out of the country and is elderly so asked his daughter, J.G., who lived upstairs in the home to act as his agent and rent the downstairs suite. They said the tenant knew the father was the landlord as he lives just up the street and visited with him for coffee. They said J.G. was unavailable as she was attending a Tribunal and could not be contacted by telephone. K.S. and B.S. both said they had full knowledge of the situation and B.S. said she does the bookkeeping for her father and has knowledge of the finances. I find on the weight of the evidence that K.S. is the landlord and he may authorize anyone to act as his agent. He authorized J.G. to act for him during the tenancy and authorizes B.S. to act

as a witness and agent in the hearing as English is his second language. I will hereinafter refer to K.S. and/or B.S. as 'the landlord'.

The undisputed evidence is that the tenancy commenced September 1, 2018 on a fixed term to August 31, 2020 pursuant to a written tenancy agreement in evidence. The current rent is \$1300 a month plus \$50 for utilities. The tenant paid a security deposit of \$650. The tenant vacated on April 10, 2019. The landlord's agent testified that the tenant failed to pay the rent for March or April and was served with two 10 Day Notices to End the Tenancy on March 28, 2019 and that the rent is still outstanding. It is undisputed the tenant vacated April 9th or 10th, 2019. The landlord re-rented the unit for May 2019 but submits the tenant is responsible for unpaid rent for March and April as it was a fixed term tenancy which the tenants breached.

The tenant testified he always paid rent in cash to J.G. but never got receipts. He said he paid rent for March, 2019 but agreed he did not pay the rent for April 2019. The parties agreed the tenants had bought a new washer and dryer for the unit. The tenant said they did not like the smell of the old ones and thought there might be electrical problems with them. They wanted to leave them and obtain compensation when they vacated. The landlord said they wanted list price for them after using them for many months and the parties could not agree on a compromise. The tenant insisted he paid rent for March and the landlord insisted he did not. Neither party had provided evidence online to support their positions on the rent. The landlord asked if they could submit their evidence supporting their allegation of non-payment of rent for March 2019 and I advised the parties, I could allow them both to submit evidence online until March 17, 2019 regarding payment of rent. We discussed compromise and options such as the tenant being required to remove his appliances from the unit during this lengthy hearing. At the end of the hearing, the parties freely and voluntarily decided they wanted to settle the matter on the following terms and conditions:

1. The landlord will keep the appliances of the tenant and not claim for unpaid rent for March 2019.
2. The tenant will pay the landlord rent for April 2019 (\$1350 plus \$50 for utilities), and agrees the landlord may retain the security deposit to offset this amount owing. The landlord will obtain a monetary order for the amount owing.
3. This agreement settles all matters between the parties in respect to this tenancy.

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, there was insufficient evidence to support his allegation that he paid rent for March 2019 and he did not pay rent for April 2019. I have therefore dismissed his application to cancel the Notice to End the Tenancy. However, I find the landlord no longer requires an Order of Possession for the tenant has vacated.

Section 55(4) of the Act provides that the arbitrator may grant an order requiring payment of the rent in these circumstances. I grant the landlord a monetary order for the settlement amount agreed upon in the hearing.

Conclusion:

I grant the landlord a Monetary Order as calculated below. I dismiss the application of the tenant without recovery of the filing fee due to lack of success.

Rent for April 2019 (including utilities of \$50)	1350.00
Rent for March settled for retention of appliances	0.00
Less security deposit	-650.00
Total Monetary Order to Landlord	700.00

I HEREBY ORDER that the landlord now owns and may retain the appliances bought by the tenant in lieu of March 2019 rent as set out in the settlement agreement.

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: May 16, 2019

Residential Tenancy Branch