



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, MNSD, FF

Introduction

The landlords and the tenant convened this hearing in response to applications.

The landlords' application is seeking orders as follows:

1. For an order of possession based on a 10 Day Notice to End Tenancy for Unpaid Rent, issued on April 5, 2019, (the "Notice for Unpaid Rent");
2. For a monetary order for unpaid rent;
3. To keep all or part of the security deposit; and
4. 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 Utilities, issued on March 30, 2019 (the "Notice for Unpaid Utilities);
2. To be allowed to change the locks; and
3. To suspend or set conditions on the landlord's right to enter the rental unit.

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 issues

At the outset of the hearing the landlords stated DD is not a tenant under the tenancy agreement. The landlords' objected to DD appearing as agent.

DD acknowledged that they are not a tenant listed in the tenancy agreement. DD stated that they are the spouse of the tenant and are acting on their behalf.

In this case, I find DD is not a tenant listed in the tenancy agreement. I find DD is not a tenant under the Act. Therefore, I find DD is an occupant and has no legal rights or obligations under the Act. Therefore, I have removed DD from the Style of Cause.

Although the tenant should have provided a letter of authority to allow DD to act as their agent, I find allowing DD to act as agent for the tenant is not prejudicial to the landlords. Therefore, I have allowed DD to act as agent for the tenant.

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.

Issues to be Decided

Are the landlords entitled to an order of possession?

Are the landlords entitled to a monetary order for unpaid rent?

Are the landlords entitled to retain the security deposit in partial satisfaction of their claim?

Should the Notice for Unpaid Utilities be cancelled?

Should the tenant be allowed to change the locks?

Should the landlords' right to enter the unit be suspended?

Background and Evidence

The tenancy began on August 5, 2018, as a one year fixed term, expiring on August 4, 2019. Rent in the amount of \$1,700.00 was payable on the first of each month. A security deposit of \$850.00 was paid by the tenant.

The tenant's agent testified that they received the Notice for Unpaid Rent. The agent stated that they thought the tenant amended their application to include the Notice for Unpaid rent.

The tenant's agent testified that they did not pay rent for April and May 2019, as they were trying to resolve the matter, when they received the Notice for Unpaid Utilities, in March 2019.

The tenant's agent acknowledged that they have no authority under the Act to withhold rent, such as an order from an Arbitrator.

The landlords testified that the tenant has made no effort to pay the rent. The landlords stated that they seek an order of possession and a monetary order for unpaid rent.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In this case, the tenant made an application to cancel a Notice for Unpaid Utilities. The tenant did not amend their application to include the Notice for Unpaid Rent. The tenant did not pay rent.

Section 46 (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.

Further, even if the tenant had amended their application to include the Notice for Unpaid Rent, which they did not. I find any application would be without merit as the tenant's agent admitted rent was not paid for April 2019, and the tenant has failed to pay subsequent rent for May 2019. A tenant cannot withhold rent simply because they feel justified to do so.

Upon review of the Notice, I find the Notice for Unpaid Rent is completed in accordance with the requirements of section 52 of the Act and remains in full force and effect. I find the tenancy legally ended on April 19, 2019, and the tenant is overholding the premise as an occupant.

I find that the landlords are 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 the tenant breached the Act, when they failed to pay rent for April and May 2019. I find the landlords are entitled to recover unpaid rent in the amount of **\$3,400.00**.

I find that the landlords have established a monetary order in the amount of **\$3,500.00** comprised of the above amount and the cost of the filing fee.

I order that the landlords retain the security deposit of **\$850.00** in partial satisfaction of the claim and I grant the landlords an order pursuant to section 67 of the Act, for the balance due of **\$2,650.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Although the tenant filed an application to cancel the Notice for unpaid Utilities, I find I do not need to consider the merits of the Notice for Unpaid Utilities as the tenancy has ended legally ended based on nonpayment of rent. As the tenancy has legally ended, I dismiss the balance of the tenant's application as they are only related to the tenancy continuing.

Conclusion

The tenant's application is dismissed. The landlords are granted an order of possession, and may keep the security deposit and interest in partial satisfaction of the claim. I grant a monetary order for the balance due.

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 21, 2019

Residential Tenancy Branch