



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ATIRA PROPERTY AMANGEMENT
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, OPC, MNR, MNSD, FFL

Introduction

On January 20, 2020, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for an order of possession; for a monetary order for unpaid rent or utilities; to keep the security deposit; and to recover the cost of the filing fee. On March 5, 2020 the Landlord amended the application to increase the amount claimed for unpaid rent. The matter was set for a conference call hearing.

The Landlord and Tenant attended the teleconference hearing. At the start of the hearing I introduced myself and the participants. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenant provided testimony that was concerning and incredible. He testified that that the Landlords agent is not the Landlord and that the tenant purchased the building a few years ago and is the owner. He testified that this is not a tenancy situation because he is the owner. He testified that this is a criminal enterprise. He testified that he is a member of NATO and has multiple purple hearts and diplomatic immunity in this matter.

The Tenant had to be warned for continuously interrupting the proceeding. After numerous warnings, the Tenant was muted for five minutes in order to allow the Landlord to testify.

Issues to be Decided

- Is the Landlord entitled to an order of possession due to unpaid rent?
- Is the Landlord entitled to an order of possession for cause?
- Is the Landlord entitled to a monetary order to recover unpaid rent?
- Is the Landlord entitled to keep the security deposit towards unpaid rent?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord and Tenant testified that the tenancy began on July 1, 2004 and is currently on a month to month basis. Rent in the amount of \$702.49. is to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit in the amount of \$247.50. The Landlord provided a copy of the tenancy agreement.

10 Day Notice to End Tenancy for Unpaid Rent or Utilities

The Landlord testified that the Tenant did not pay the rent owing under the tenancy agreement for the month of January 2020.

The Landlord testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 6, 2020, ("the 10 Day Notice"). The Landlord testified that the 10 Day Notice was served by registered mail sent to the Tenant on January 6, 2020. The Landlord provided registered mail receipt documents indicating the mail was delivered on January 11, 2020.

The 10 Day Notice indicates that the Tenant has failed to pay rent in the amount of \$701.50 which was due on January 1, 2020. The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

The Tenant testified that he received the 10 Day Notice in January 2020. He testified that he disputed the 10 Day Notice by sending an email to someone. The Application before me was submitted by the Landlord. There is no evidence before me that the Tenant made an application to dispute the 10 Day Notice.

The Tenant testified that he is having a dispute with the Landlord and he has not paid the rent owing under the tenancy agreement for January; February; and March.

The Landlord testified that the Tenant did not pay the rent owing for January 2020 rent within five days of receiving the 10 Day Notice.

The Landlord testified that in addition to January 2020; the rent has not been paid for February 2020 and March 2020. The Landlord testified that the Tenant owes \$2,107.47 for unpaid rent.

The Landlord seeks an order of possession of the rental unit and a monetary order for unpaid rent in the amount of \$2,107.47.

The Landlord is seeking to keep the security deposit of \$247.50 in partial satisfaction of the claim for unpaid rent.

One Month Notice To End Tenancy For Cause

The Landlord submitted that the Tenant was served with a One Month Notice to End Tenancy for Cause dated December 31, 2019. The One Month Notice contains reasons for ending the tenancy. The Notice provides:

Tenant or a person permitted on the property by the Tenant has:

- *Significantly interfered with or unreasonably disturbed another occupant or the Landlord*

Tenant has engaged in illegal activity that has, or is likely to:

- *Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the Landlord*

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written Notice to do so

The Notice provides information for Tenants who receive the Notice. The Notice states that a Tenant has the right to dispute the Notice within 10 days after receiving it by filing an Application for Dispute Resolution at the Residential Tenancy Branch. If a Tenant does not file an Application within 10 days, the Tenant is presumed to accept the Notice and must move out of the rental unit or vacate the site by the date set out on page 1 of the Notice. If the Tenant does not file an Application, move or vacate, the Landlord can apply for an Order of Possession that is enforceable through the court.

There is no evidence before me that the Tenant made an application to dispute the One Month Notice.

The Landlord testified that the tenant is not the owner of the rental property. She testified that a Government Ministry has previously paid the Tenants rent; however rent has not been received for January; February and March 2020.

Analysis

Section 26 of the Act provides that 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.

Based on the evidence before me, the testimony of the Landlord and Tenant, and on a balance of probabilities, I find that the Tenant received the 10 Day Notice served by the Landlord by registered mail. I find that the Tenant did not pay the rent owing under the tenancy agreement within five days of receiving the 10 Day Notice, and did not apply to dispute the Notice, and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the 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 Tenant owes the Landlord \$2,107.47 in unpaid rent for the months of January 2020; February 2020; and March 2020.

I order that the Landlord can keep the security deposit in the amount of \$247.50 in partial satisfaction of the award for unpaid rent.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I find that the Landlord has established a total monetary claim of \$2,207.47 comprised of \$2107.47 in unpaid rent for the above-mentioned dates and the \$100.00 fee paid by the Landlord for this hearing.

After setting off the security deposit of \$247.50 towards the award of \$2,207.47, I find that the Landlord is entitled to a monetary order in the amount of \$1,959.97. This monetary 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.

Since the tenancy has ended due to a fundamental breach of the tenancy agreement regarding payment of rent, there is no need to consider the One Month Notice to End Tenancy for Cause dated December 31, 2019.

Conclusion

The Tenant failed to pay the rent due under the tenancy agreement and failed to pay the rent within five days of receiving the 10 Day Notice. The Tenant did not file to dispute the 10 Day Notice. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice.

I find the Tenant owes the Landlord \$2,107.47 in unpaid rent.

I order that the Landlord can keep the security deposit in the amount of \$247.50 in partial satisfaction of the unpaid rent.

The Landlord is granted an order of possession effective two (2) days after service on the Tenant and I grant a monetary order for the unpaid rent and the cost of the filing fee in the amount of \$1,959.97.

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: March 24, 2020

Residential Tenancy Branch