



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: CNC-MT, CNR

For the landlord: OPRM-DR, OPR-DR, FFL, MNDCL

Introduction

On December 1, 2020 the tenant applied for dispute resolution for an order cancelling the One-Month Notice to End Tenancy for Cause (the “One-Month Notice”). On December 10, 2020 they amended their Application to cancel the 10-Day Notice to End Tenancy for Unpaid Rent (the “10-Day Notice”).

On December 18, 2020 the landlord applied for an order of possession of the rental unit, a monetary order for rent not paid, and a monetary order for other loss. Additionally, they applied for reimbursement of the application filing fee.

The landlord’s application here was filed initially as a Direct Request. The matter proceeded by way of participatory hearing because this Direct Request application cannot be considered by that method when there is a cross-application by the tenant in place.

The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on February 26, 2021. The landlord attended the telephone conference call hearing; the tenant did not attend. From the landlord’s account in the hearing, I am satisfied they served their prepared evidence to the tenant in two ways, both authorized by the Act.

Preliminary Matter

The tenant did not attend the hearing, although I left the teleconference hearing connection open until 11:26 a.m. to enable them to call in to this teleconference hearing scheduled for 11:00 a.m. I confirmed the correct call-in numbers and participant codes were provided in the Notice of Hearing generated when they applied. I also confirmed throughout the duration of the call that the tenants were not in attendance.

Rule 7.3 of the Rules of Procedure provides that if a party or their agent fails to attend the hearing, the arbitrator may conduct the hearing in the absence of that party or dismiss the application without leave to reapply. On this basis, I dismiss the tenant's application for cancellation of the 10-Day Notice, as well as their application for cancellation of the One-Month Notice. The tenant does not have leave to reapply on these issues.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent and utilities pursuant to section 67 of the *Act*?

Is the landlord entitled to compensation for other monetary loss pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this Application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlord provided a copy of the tenancy agreement that appears in the evidence. The parties signed the agreement jointly on November 1, 2020 for the tenancy starting on November 1. The rent payable was \$825 per month, and the tenants paid a \$412.50 security deposit. On these points concerning the initial agreement, there is no evidence contrary to that provided by the landlord here.

The landlord provided a copy of the 10-Day Notice, issued December 3, 2020. This document gave the move-out date of December 13, 2020. This listed the failure by the tenants to pay the rent for \$825 on December 1, 2020. The landlord served this document by attaching it to door of the rental unit on December 3. As provided in a 'Proof of Service' document, a witness observed this service and signed a statement attesting to that on December 3, 2020.

On the Application, the landlord listed an amount of rent owing of \$2,475. This was an amendment to their original Application, adding the following months of January (\$825) and February (\$825) to the total amount of rent claimed. Additionally, they stated in the hearing they wish to amend their Application to include the following month of March 2021 full rent amount (\$825).

In the hearing, the landlord stated they were not certain if the tenant vacated the unit already. They did not observe either of the tenant's two vehicles by the rental unit two days prior to the hearing. There was no communication from the tenant since the beginning of January when the landlord inquired about that month's rent.

The landlord also presented that their other monetary loss stemming from the tenancy is that for preparation and delivery of documents for this hearing. This total is \$212.35. They presented receipts for each separate piece of this portion of their claim.

Including the Application filing fee, the total amount of the landlord's claim stemming from this tenancy is \$2,787.35

Analysis

From the evidence and testimony of the landlord, I am satisfied that a tenancy agreement was in place. They provided the specific terms of the rent payments as well as the amount the tenant paid for the security deposit. The tenant did not attend the hearing; therefore, there is no evidence before me to show otherwise.

The *Act* section 46(1) states that a landlord may end a tenancy if the rent is unpaid on any day after the rent is due, by giving notice to end the tenancy, effective on a date that is not earlier than 10 days after the tenant receives the notice.

Section 46(4) of the *Act* states that within 5 days of receiving a notice a tenant may pay the overdue rent, thereby cancelling the Notice, or dispute it by filing an Application for Dispute Resolution.

I find as fact that the tenant held occupancy of the unit beyond December and into January and February 2021. By December 3, 2020, when the landlords issued the 10 Day Notice, the tenants had not paid rent for the month of December.

In the hearing the landlord presented that they messaged the tenant in early January to inquire on that month's rent, as well as the prior rent amount still owing. The landlord stated their tenant's curt response was that they would inform the police that the landlord was harassing them.

I accept the evidence before me that the tenant failed to pay the December rent owed in full by December 8, 2020 within five days granted under the *Act*. For that reason, I find the reason the landlords served the 10 Day Notice is valid. The tenant is not successful in seeking to cancel this 10 Day Notice; therefore, I dismiss the tenant's application.

The *Act* section 52 states that a notice to end tenancy, in order to be effective, must be in writing and must be signed and dated by the landlord, give the rental unit address, state the effective date, state the grounds for ending the tenancy, and be in the approved form.

I find the landlord has the authority to issue the Notice under section 46 of the *Act*. On my review of the individual document, I find it complies with the requirements of section 52 regarding form and content. Therefore, I grant the landlord's request for an Order of Possession under section 55 of the *Act*.

Concerning a monetary claim, the party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

The *Act* section 26 outlines a tenant's duty to pay rent:

- (1) A tenant must pay rent when it is due under the tenancy agreement, whether 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.

I accept the evidence before me that the tenant failed to pay full rent for December 2020 continuing on with a balance after that, and the months following through to February 2021. This is based on the affirmed and uncontested oral testimony of the landlord in the hearing. I find on a balance of probabilities that these amounts are accurate. As presented, I find the landlord is entitled to the amount of \$2,475 as they claim.

The landlord also claims \$212.35 for other monetary loss. These amounts, as listed and supplemented with receipts, concern preparation and presentation of the material for this hearing. With regard to the four points listed above, these amounts do not *directly* stem from damage or loss associated with the tenancy. The *Act* does not provide for recovery of other costs associated with serving hearing documents – therefore, the cost of registered mail and document preparation is not recoverable.

At the hearing stage, the landlord also claimed the amount of rent for the month of March 2021. This is without confirming the tenant remains in the rental unit, and prior to the March payment date on March 1. At the hearing stage it is unknown whether the tenant will pay that monthly rent on March 1. I deny this amendment to their claim. The landlord is free to apply for other monetary amounts – those which arise post-tenancy – in a separate hearing process and choose to so claim this specific amount.

In the hearing, the landlord inquired about the security deposit amount. The *Act* section 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlord. The landlord has established a claim of \$2,475. After setting off the security deposit amount of \$412.50, there is a balance of \$2,062.50. I am authorizing the landlord to keep the security deposit and award the balance of \$2,062.50 as compensation for rent owing.

As the landlord is successful, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

Pursuant to section 67 and 72 of the *Act*, I grant the landlord a Monetary Order for the recovery of the rent amounts claimed and the filing fee paid for this application. This amount is \$2,162.50. The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: February 26, 2021

Residential Tenancy Branch