



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”), issued on March 10, 2021.

Only the landlord’s agent appeared. The tenant did not appear although they filed their application which was scheduled for today’s date. The tenant was also sent an email reminder from the RTB on June 16, 2021, to the email address they provided in their application. The reminder again provided them with the date and time to call into the hearing. As the tenant did not appear this hearing proceeded in their absence.

The landlord’s agent was provided the opportunity to present their evidence orally and in written and documentary form and make submissions at the hearing.

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.

Issue to be Decided

Should the Notice be cancelled?

Background and Evidence

The tenant submits in their application that they received the Notice on March 11, 2021. The following submission was provided by the tenant in their application.

“I wasn’t made aware that my payment hadn’t gone through until I was given the notice, so I assumed I had paid. I have the payment set up to automatically send and something obviously went wrong”.

[Reproduced as written.]

The landlord's agent testified that the tenant was in rent arrears of \$1,900.00 at the time the Notice was issued. The landlord stated the outstanding rent was not paid within five days. Filed in evidence is a copy of the Notice.

The landlord's agent testified that since the Notice was issued they have only received \$950.00 each month from the tenant's roommate. The agent stated that the current arrears as of June 2021, have now increased to the amount of \$4,750.00. Filed in evidence is a copy of the tenant ledger.

Analysis

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

How to end a tenancy is defined in Part 4 of the Act.

Landlord's notice: non-payment of rent

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

(2) A notice under this section must comply with section 52 [form and content of notice to end tenancy].

...

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

Upon review of the Notice, I find the Notice is completed in accordance with the requirements of section 52 of the Act.

Under the legislation the tenant may dispute the Notice for specific reasons, such as they have proof that their rent was paid or that the tenant had the right under the Act to deduct all or a portion from their rent, such as an order from an Arbitrator.

Although the tenant filed an application for dispute resolution within the time limit permitted under the Act, I find the tenant's application had no merit as the tenant did not pay the outstanding rent within 5 days after receiving the Notice.

Further, even if there was a problem with the automatic payment system the tenant had setup, as claimed by the tenant, their rent money should have still been in their account to pay the landlord, and could have been paid within five days of receiving the Notice. I find the Notice is valid and remains in full force and effect. Therefore, I dismiss the tenant's application to cancel the Notice.

As the tenant's application is dismissed and I have found the Notice is valid. I find the landlord is entitled to an order of possession, pursuant to section 55(1) of the Act.

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 am satisfied by the landlord's agent testimony and the tenant's rent ledger, that the tenant has failed to pay rent totalling \$4,750.00 up to June 2021. I find I must grant the landlord a monetary order for the unpaid rent in the above amount, pursuant to section 55(1.1) of the Act.

As the landlord currently holds a security deposit in the amount of \$950.00, I find it appropriate to offset the amount of owed of \$4,750.00 with the security deposit of \$950.00. I grant the landlord a formal order for the balance due of **\$3,800.00**. This order may be enforced 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.

Conclusion

The tenant's application is dismissed. The landlord is granted an order of possession and a monetary order for the unpaid rent.

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 29, 2021

Residential Tenancy Branch