



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, LRE, LAT, AS, OLC

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice), pursuant to section 46;
- an order to restrict or suspend the landlord's right of entry, under section 70;
- an order of authorization to change the lock, pursuant to sections 31 and 70;
- an order for the landlord to allow an assignment or sublet when permission was unreasonably denied, pursuant to section 65; and
- an order for the landlord to comply with the Act, the Residential Tenancy Regulation and/or tenancy agreement, pursuant to section 62.

The respondent (landlord) and witnesses ZA and ZI called into this teleconference at the date and time set for the hearing of this matter. Although I waited until 11:17 A.M. to enable the applicant (tenant) to connect with this teleconference hearing scheduled for 11:00 A.M., the applicant did not attend.

I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord, his witnesses, and I were the only persons who had called into this teleconference.

At the outset of the hearing the attending party affirmed he understands it is prohibited to record this hearing.

The landlord confirmed receipt of the notice of hearing and the evidence (the materials) on April 21, 2021. Based on the landlord's testimony, I find the tenant served the materials in accordance with sections 88 and 89 of the Act.

I note that section 55(1.1) of the Act requires that when a tenant submits an application for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord

under section 46 of the Act, I must consider if the landlord is entitled to a monetary order if the application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the Act:

If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [landlord's notice: non-payment of rent], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

Preliminary Issue - Tenant's application dismissed

At the outset of the hearing the landlord informed me the tenant abandoned the rental unit on or about May 15, 2021. The tenant's application is moot since the tenancy has ended.

Section 62(4)(b) of the Act states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be determined under the Act.

Accordingly, I order the tenant's application dismissed without leave to reapply.

Issue to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the claim and my findings are set out below.

The landlord affirmed the tenancy started on December 15, 2020. Monthly rent was \$1,400.00, due on the first day of the month. At the outset of the tenancy the landlord collected a security deposit of \$700.00 and holds it in trust. The tenancy agreement was submitted into evidence. It indicates monthly rent is \$1,400.00.

The landlord stated the tenant did not pay rent in April and May 2021. The landlord is claiming for unpaid rent in the amount of \$2,800.00.

The landlord served the Notice by attaching it to the tenant's door on April 06, 2021. A copy of the April 06, 2021 Notice was submitted into evidence. It indicates the tenant did

not pay rent in the amount of \$1,400.00 due on April 01, 2021. The effective date was April 15, 2021.

Analysis

The tenant is deemed served the Notice on April 09, 2021, in accordance with sections 88(g) and 90(c) of the Act. I have reviewed the Notice and I find the effective date is incorrect. Pursuant to section 46(1) of the Act, 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.

Pursuant to section 53(2) of the Act, the effective date is automatically corrected to April 19, 2021. Otherwise, I find the form and content of the Notice complies with section 52 of the Act, as it is signed by the landlord, gives the address of the rental unit, states the grounds to end tenancy and is in the approved form.

Based on the above, I find the tenancy ended on April 19, 2021, per section 44(1)(a)(ii) of the Act.

I accept the landlord's uncontested testimony that the tenancy agreement requires the tenant to pay monthly rent of \$1,400.00 on the first day of the month.

Section 26 of the Act requires that a tenant pay rent when it is due under the tenancy agreement.

Residential Tenancy Branch Policy Guideline 3 states:

Section 44 of the Residential Tenancy Act and section 37 of the Manufactured Home Park Tenancy Act set out when a tenancy agreement will end. A tenant is not liable to pay rent after a tenancy agreement has ended pursuant to these provisions, however if a tenant remains in possession of the premises (overholds), the tenant will be liable to pay occupation rent on a per diem basis until the landlord recovers possession of the premises. In certain circumstances, a tenant may be liable to compensate a landlord for loss of rent.

Based on the landlord's undisputed testimony, the tenancy agreement and the Notice, I find the tenant is \$886.66 in rental arrears for rent from April 01 to 19, 2021 (\$1,400.00 / 30 x 19 days). Per sections 26 and 55(1.1) of the Act, I award the landlord \$886.66 for unpaid rent.

Per section 72(2)(b) of the Act, I authorize the landlord to retain the \$700.00 security deposit in partial satisfaction of the monetary award granted.

Conclusion

Pursuant to sections 26, 55(1.1) and 72 of the Act, I authorize the landlord to retain the \$700.00 security deposit and grant the landlord a monetary order in the amount of \$186.66.

The landlord is provided with this order in the above terms and the tenant must be served with this order. 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 *Residential Tenancy Act*.

Dated: June 28, 2021

Residential Tenancy Branch