



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, CNR, FF

Introduction

This was a cross-application hearing for Dispute Resolution under the *Residential Tenancy Act* (“the Act”).

On March 18, 2021, the Tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 13, 2021.

On March 23, 2021, the Landlord applied for an order of possession for the rental unit and a monetary order for unpaid rent based on the issuance of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 13, 2021.

This matter was set for hearing by telephone conference call at 11:00 am on this date. The Landlord attended the hearing; however, the Tenant did not. The line remained open while the phone system was monitored for 12 minutes and the Tenant did not call into the hearing during this time. Therefore, as the Tenant did not attend the hearing by 11:12 am, I dismiss the Tenant’s application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 13, 2021 without leave to reapply.

The Landlord provided affirmed testimony that the Tenant was served with the Notice of Dispute Resolution Proceeding in person on March 24, 2021 at the rental unit. Based on this testimony, I find that the Tenant was served with notice of the hearing in accordance with sections 89 and 90 of the Act.

The hearing proceeded on the Landlord’s application for an order of possession for the rental unit and a monetary order for unpaid rent based on the issuance of a 10 Day Notice to End Tenancy for Unpaid Rent dated March 13, 2021 (“the 10 Day Notice”).

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.

Issues to be Decided

- Is the Landlord entitled to an order of possession and monetary order due to non-payment of rent owing under the tenancy agreement?

Background and Evidence

The Landlord testified that the tenancy began on September 2020 as a one-year fixed term tenancy that ends on August 31, 2021. Rent in the amount of \$1,300.00 is due to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$650.00.

10 Day Notice

The Landlord testified that the Tenant were served with the 10 Day Notice on March 13, 2021. The 10 Day Notice was taped to the Tenant's door. The 10 Day Notice indicates the Tenant failed to pay \$300.00 that was due on February 1, 2021 and \$1,300.00 that was due on March 1, 2021. The Landlord provided a copy of the 10 Day Notice.

The 10 Day Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenants had five days to dispute the Notice. The Tenant received the 10 Day Notice on March 12, 2021 and disputed the 10 Day Notice on March 18, 2021.

The Landlord testified that the Tenant did not pay the rent owing under the tenancy agreement and cited in the 10 Day Notice within five days of receiving of the 10 Day Notice.

The Landlord testified that he has not received the \$1,600.00 owing at any point since the 10 Day Notice was served.

The Landlord is requesting an order of possession for the rental unit and a monetary order for unpaid rent.

The Landlord requested to amend the application to include additional months of unpaid rent. The Landlord testified that the tenant is still living in the rental unit and not paying all the rent owing.

The Landlord testified that that in addition to the \$1,600.00 owing from February and March 2021 the Tenant owes the following amounts:

| Month | Rent Paid | Rent Owing |
|------------|------------|------------|
| April 2021 | \$100.00 | \$1,200.00 |
| May 2021 | \$0 | \$1,300.00 |
| June 2021 | \$1,000.00 | \$300.00 |
| | total | \$2,800.00 |

The Landlord is seeking a monetary order in the amount of \$4,400.00.

Analysis

Section 26 of the Act provides that a Tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the 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 on a balance of probabilities, I find make the following findings:

I find that the tenancy agreement requires the Tenant to pay the Landlord rent of \$1,300.00 each month. I find that the Landlord issued the Tenant the 10 Day Notice on March 13, 2021 and it is deemed to have been served three days later on March 16, 2021. I accept the Landlord's testimony that the Tenant did not pay the rent owing under the tenancy agreement and cited within the 10 Day Notice within five days of receiving the 10 Day Notice.

The Tenant failed to appear at the hearing and there is no evidence before me that the Tenant had a legal right to withhold payment of rent.

I find that the tenancy is ending due to a fundamental breach of the tenancy agreement regarding payment of rent.

I find that the 10 Day Notice complies with the requirements for form and content and I find that the Landlord are entitled to an order of possession effective two (2) 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 has failed to pay the rent owing under the tenancy agreement. I find that the Tenant owes the Landlord \$1,600.00 for unpaid February and March rent.

I also find that the Tenant has not paid all the rent owing for the months of April, May, and June 2021, and the Landlord has suffered a loss of rent for these months. The Tenant is aware that she is required to pay rent each month and therefore, pursuant to section 64 of the Act, I allow the claim to be amended to include an additional months of rent in the amount of \$2,800.00.

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 \$4,500.00 comprised of \$4,400.00 in unpaid rent for the above-mentioned months and the \$100.00 fee paid by the Landlord for this hearing. 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.

Conclusion

The Tenant failed to attend the hearing to pursue her application to dispute the 10 Day Notice. The Tenant's application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 13, 2021 is dismissed.

The Tenant failed to pay the rent owing under the tenancy agreement within five days of receiving a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and did not have a legal right to withhold payment of the rent. The Landlord is granted an order of possession for the rental unit effective two (2) days, after service on the Tenant.

The Landlord is granted a monetary order for unpaid rent and the cost of the filing fee in the amount of \$4,500.00.

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