



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, FF

Introduction

This hearing was convened in response to applications by the tenant and the landlord filed under the Residential Tenancy Act.

The tenant's application is seeking orders as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice"), issued on April 13, 2021;
2. To have the landlord make repairs to the rental unit; and
3. To have the landlord comply with the Act.

The landlord's application is seeking orders as follows:

1. For an order of possession;
2. For a monetary order for unpaid rent; and
3. To recover the cost of filing the application.

Only the landlord appeared.

The tenant filed an application to cancel the Notice and other relief under the Act on April 16, 2021. The tenant was aware of the hearing date as it was scheduled at their request.

On August 20, 2021, the Residential Tenancy Branch sent by email to the tenant a reminder notification of today's hearing, August 23, 2021 at 9:30AM. This was sent to the email address the tenant provided as service, which in part reads as follows.

Dispute Resolution Proceeding Reminder

This is a reminder that you have an upcoming dispute resolution proceeding for File Number [removed].

Hearing date: August 23 2021

Hearing time: 09:30 AM

Instructions for the proceeding were provided in the Notice of Dispute Resolution Proceeding. If you do not attend this hearing, you will lose the opportunity to provide information that could impact the result. The proceeding will continue even if one party does not attend.

This is an automatically generated email. Please do not reply to this message. If you have received this email in error, please contact the Residential Tenancy Branch using the contact information at the bottom of this email.

[Copied from RTB digit file]

[My Emphasis Added.]

As the tenant did not attend the hearing, the hearing proceeded in the absence of the tenant. The telephone line remained opened for the duration of the hearing, which was approximately 15 minutes.

Preliminary Issue

Although the landlord filed an application for an order of possession and a monetary order for the unpaid. The landlord was not required to make an application because under section 55 of the Act, I must grant and order of possession and a monetary order for the unpaid rent if the tenant's application to cancel the dismissed and the Notice is upheld.

Issue to be Decided

Should the Notice be cancelled?

Background and Evidence

The tenancy began on October 1, 2020. Rent in the amount of \$1,300.00 was payable on the first of each month. A security deposit of \$650.00 was paid by the tenant.

The landlord testified that the tenant was served with the Notice on April 13, 2021, for unpaid rent in the amount of \$1,100.00. Filed in evidence is a copy of the Notice.

The tenant submits in their written application that they received the Notice on April 13, 2021. The tenant filed their application for dispute resolution on April 16, 2021.

The tenant submits is their written application the following.

“Landlord accepts rent only in cash and no receipt is ever given. He refuses it to any and all tenants here, I paid 1100.00 on April 1st and 200 remaining on the 8th. When I brought the 200.00 he screamed I had never paid him the first 1100.00. Luckily my friend [name removed] was over from work for dinner and saw me take the cash over. This is fraud and he is stealing my rent. I complained about the bugs to often I am assuming.”

[Reproduced as written.]

The landlord denied that tenant’s allegation that rent was paid on April 1, 2021. The landlord stated that on April 2, 2021, they had a conversation with the tenant about the unpaid rent which the tenant stated they would have the rent in a few days. The landlord stated they only received \$200.00 from the tenant on April 8, 2021. The landlord seeks an order of possession and a monetary order for the unpaid rent.

Analysis

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

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

I accept the undisputed testimony of the landlord that the tenant failed to pay the amount of \$1,100.00 for April 2021, rent and was served with the Notice. The tenant did not attend the hearing to provide any testimony to support their written submission. Nor did the tenant provide any evidence in support of their application for me to consider, such as a copy of their bank statement showing they had withdrawn the amount of \$1,100.00 or an affidavit of their alleged witness.

Based on the above, I find the tenant failed to pay rent for April 2021, in the amount of \$1,100.00. Therefore, I find the Notice is valid and remains in full force or effect. I dismiss the tenant's application without leave to reapply.

As the tenant's application is dismissed, I find the landlord is entitled to an order of possession, pursuant to section 55 of the Act.

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

(1.1) 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.

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 landlord is entitled to a monetary order, pursuant to section 55(1.1) of the Act, in the amount of \$1,100.00. This order may be filed in the Provincial Court 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. I did not grant the landlord the cost of the filing because they were not required to file an application for dispute resolution as the tenant had already dispute the Notice and under the Act, I must grant the above orders through the tenant's application.

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: August 23, 2021

Residential Tenancy Branch