



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT

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 August 24, 2021.

Only the landlord appeared. The landlord testified that the tenant did not serve them with their application and only found out about the hearing when they contacted the Residential Tenancy Branch. The landlord indicated they are prepared to proceed with the hearing.

This matter was set for hearing by telephone conference call at 11:00 A.M on this date. The line remained open while the phone system was monitored for ten minutes and the only participant who called into the hearing during this time was the landlord.

In this case, the tenant filed their application for dispute resolution on August 30, 2021. On September 14, 2021 the tenant was provided the Notice of Hearing packages, which contain the telephone number and access codes to dial into the conference hearing.

On November 15, 2021, the tenant was sent a reminder notification regarding the evidence deadline. No evidence was provided, such as the receipts they indicated in the details of dispute.

On December 3, 2021, the tenant was sent a further notification, which was a reminder of the upcoming hearing, which again stated the date and time, and that the instruction for the hearing were in the Notice of Dispute package. The reminder also indicated that the hearing would proceed even if one party does not attend.

Therefore, as the tenant did not appear the hearing proceed in their absence, in accordance with Rules 7.3 and 7.4 of the Rules of Procedures.

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 tenancy began on July 15, 2020. Rent in the amount of \$1,950.00 was payable on the first of each month. A security deposit of \$975.00 was paid by the tenant.

The tenant acknowledged in their application that they received the Notice on August 25, 2021. A copy of the Notice was provided with the application.

The description of tenant dispute is as follows,

“I’m disputing the amount if money that is owing. I have my rental receipts and have knowledge of only a portion of these monies being over due to the Landlord

[Reproduced as written]

The tenant did not provide a copy of the rent receipts although they had sufficient time to do so.

The landlord testified that this was a co-tenancy between PC and RM, and they were told that the tenant RM had moved out some time ago and they have no issues with the tenant’s application being solely in the name of PC.

The landlord testified at the time the Notice was issued the tenant in rent arrears of \$3,375.00, as the tenant had failed to the amount of \$450.00 for January 2021, rent. February 2021, in the amount of \$1,950.00 was not paid, and failed to pay the amount of \$975.00 for August 2021.

The landlord testified that the tenant has not paid any subsequent rent for September, October, November and December 2021. The landlord stated that the current rent owed is the amount of \$11,175.00.

The landlord seeks an order of possession and a monetary order for the unpaid rent.

The landlord stated that the tenant has also failed to pay the utilities.

Analysis

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

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not 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.

...

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.

In this case, I accept the evidence of the landlord that the tenant was in rent arrears of \$3,375.00 at the time the Notice was issued. The tenant acknowledged rent was owed in the description of their dispute. The tenant did not attend the hearing nor did the tenant provide any evidence, such as the receipts to show the calculation difference, or to prove the balance was paid within the five days required by the Act. I find the tenant breached the Act when they failed to pay rent. I find the Notice issued on August 24, 2021 is valid and remains in full force and effect. I find the tenancy legally ended on September 8, 2021 and the tenant is overholding the premises.

Therefore, I dismiss the tenant's application without leave to reapply. As the tenant was not successful with their application the tenant is not entitled to recover the filing fee from the landlord.

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 note that this was a co-tenancy. This means that the tenancy ends for both tenants. I have included RM in the order of possession should RM return to the property.

I find the landlord entitled to a monetary order for the unpaid rent. This is \$3,375.00 for unpaid rent due at the time the Notice was issued and \$7,800.00 for unpaid rent for September, October, November and December 2021. I find the landlord is entitled to recover the total of unpaid rent in the amount of **\$11,175.00**.

I order that the landlord retain the security deposit of **\$975.00** in partial satisfaction of the claim and I grant the landlord an order under section 55(1.1) and 67 of the Act for the balance due of **\$10,200.00**. This 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.

The landlord is at liberty to make their own application for dispute resolution to recover the unpaid utilities.

Conclusion

The tenant's application is dismissed. The landlord is granted an order of possession.

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: December 06, 2021

Residential Tenancy Branch