



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, LRE, FFT, OPR, MNR, FFL

Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application is seeking orders as follows:

1. For an order of possession;
2. For a monetary order for unpaid rent;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. To cancel two 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notices"), issued on February 11 and February 14, 2022;
2. To suspend or set conditions on the landlord's right to enter the rental unit; and
3. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing. The parties confirmed they were not recording this hearing in compliance with the Rules of Procedure.

Background and Evidence

The tenancy began on January 5, 2020. Rent in the amount of \$925.00 was payable on the first of each month. A security deposit of \$465.00 was paid by the tenant

The tenant testified that they received the Notices. The tenant testified that they text the landlord on February 3, 2022, and the landlord did not want the rent.

The text message reads as follows,

“ [tenant] I have rent if you choose to retrack the eviction. [landlord] eviction hold do not message me again”

[Reproduced as written]

The tenant confirmed the did not pay rent for February and March 2022.

The landlord’s agent testified that the tenant was in rent arrears prior to February 2022 and failed to pay rent for February 2022, when the Notices were issued. The agent stated the tenant did not pay the arrears or rent for February and they were not prepared to retrack the prior eviction notice. The agent stated that the tenant failed to pay subsequent rent for March 2022

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.

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.

However, a tenant cannot withhold because they want to force the landlord to retrack an earlier eviction notice. I find the tenant failed to pay rent for February and March 2022. I find the Notices to end tenancy are valid and remain in full force and effect. . 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 find the landlord is entitled to a monetary order, pursuant to section 55(1.) of the Act, for unpaid rent for February and March 2022, in the amount of **\$1,850.00**. I have not considered rent arrears prior to February 2022, as I have insufficient evidence to decide on the amount owed.

I find that the landlord has established a total monetary claim of **\$1,950.00** comprised of the above described amount and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$465.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$1,485.00**. 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.

Conclusion

The tenant's application is dismissed without leave. The landlord is granted a monetary order and may the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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: April 01, 2022

Residential Tenancy Branch