



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.

The tenant's application filed on March 11, 2022, is seeking orders as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice"), issued on March 4, 2022, and received on March 7, 2022.

The landlord has filed three separate application dated March 15, 2022, April 29, 2022, and May 19, 2022, 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 did not appear although the telephone line was open for an extended period of time.

When a tenant makes an application to cancel the Notice, I must automatically consider whether the landlord is entitled to an order of possession and a monetary order for the unpaid rent, pursuant to section 55 of the Act. There is no requirement under the Act that the landlord must make a separate application.

However, in this matter the landlord did make separate applications. I am satisfied that the landlord did serve the tenant with their applications as the landlord stated their first application was served by registered mail sent on March 22, 2022, a Canada Post tracking number was provided. The landlord further provided that both subsequent applications were sent by registered mail and the Canada post tracking numbers were

provide. I am satisfied that the landlord has duly served the tenants in accordance with the Act.

At the outset of the hearing the landlord stated that they no longer require an order of possession as the tenant vacated the premises on May 31, 2022.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent pursuant to section 55.1 and 67 of the Act?

Background and Evidence

The tenancy began on August 1, 2021 and was a one year fixed term tenancy agreement expiring on last day of July 2022. Rent in the amount of \$3,600.00 was payable on the first of each month. A security deposit of \$1,800.00 was paid by the tenant. The landlord indicated that this was a corporate tenant who was renting housing for their employees.

The landlord testified that the tenant had failed to pay for March 2022 and were served with the Notice.

The landlord stated that at a previous hearing on March 10, 2022, the parties entered into a settlement agreement. The settlement agreement in the March 10, 2022, Decision reads as follows:

“Both parties agreed to the following final and binding settlement of all issues listed in these applications for dispute resolution:

1. The tenant agrees to provide the landlord with vacant possession of the subject rental property by 1:00 P.M. on May 31, 2022. An Order of Possession will be issued.
2. The tenant will pay rent in the amount of \$3,600.00 for March 2022 by March 11, 2022.
3. The tenant will pay rent in the amount of \$3,600.00 on April 01 and \$3,600.00 on May 01, 2022.
4. Both parties are at liberty to submit monetary applications related to this tenancy, including the claim made by the landlord in her application.”

[Reproduced as written]

The landlord testified that the tenant did not honour the settlement agreement and they failed to pay March and April 2022 rent and subsequent rent for May 2022. The landlord seeks to recover unpaid rent in the amount of \$10,800.00.

The tenant submits in their application filed on March 11, 2022, the following:

“Describe why you are disputing the notice:
Payment was correctly submitted as automatic payment by a third party agent”

[Reproduced as written]

The tenant did not provide any documentary evidence to prove the rent was paid.

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.

...

I accept the evidence of the landlord that the tenant failed to pay rent as set out in their tenancy agreement and the settlement agreement. I find it highly unlikely that the tenant paid the rent as indicated in their application as at the very least I would expect to see a copy showing this automatic payment by this third-party agent paid to directly to the landlord.

I find the tenant failed to pay rent for March, April and May 2022 in the amount of **\$10,800.00**.

I find that the landlord has established a total monetary claim of **\$10,900.00** comprised of the above described amount and the \$100.00 fee paid for this application. I did not grant the landlord the other filing fees as they could have simply amended their original application.

I order that the landlord retain the security deposit of **\$1,800.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$9,100.00**. The landlord must serve a copy of this order on the tenant. I authorize the landlord to serve the tenant a copy of this Order by email, at the email address the tenant provided to the landlord in the tenancy agreement. I have noted that email address on the covering page of this decision.

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. The landlord is granted a monetary order of unpaid

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, 2022

Residential Tenancy Branch