



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on March 07, 2022 (the “Application”). The Tenant applied as follows:

- To dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 06, 2022 (the “Notice”)
- To recover the filing fee

The Landlord appeared at the hearing. The Tenant did not appear at the hearing. The hearing proceeded for 25 minutes, and nobody called into the hearing for the Tenant during this time. I explained the hearing process to the Landlord. I told the Landlord they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Landlord provided affirmed testimony.

The Landlord advised that the Tenant moved out of the rental unit April 30, 2022, and they are not seeking an Order of Possession based on the Notice. However, the Landlord did seek a Monetary Order for unpaid rent for March and April of 2022. Given this, I proceeded with the hearing pursuant to rule 7.3 of the Rules.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Landlord testified that they did not receive the hearing package or evidence from the Tenant. RTB notes show the RTB sent the hearing package to the Landlord March

31, 2022. The Landlord testified that they served their evidence on the Tenant in person April 28, 2022.

I do not find it to be an issue that the Landlord did not receive the hearing package from the Tenant because the Landlord received it from the RTB March 31, 2022, and therefore was able to prepare for, and appear at, the hearing.

The Tenant was required to serve their evidence on the Landlord pursuant to rule 3.14 of the Rules. I accept the undisputed testimony of the Landlord that they did not receive the Tenant's evidence. Pursuant to rule 3.17 of the Rules, I exclude the Tenant's evidence, other than the Notice, because I find it would be unfair to admit it when the Landlord had not seen it and could not reply to it at the hearing. I have considered the Notice because it is a document issued by the Landlord and therefore the Landlord is aware of it regardless of service.

I accept the undisputed testimony of the Landlord about service of their evidence and find the Tenant was served in accordance with section 88(a) of the *Residential Tenancy Act* (the "Act") on April 28, 2022. I also find the Landlord complied with rule 3.15 of the Rules in relation to the timing of service.

As stated, I proceeded with the hearing in the absence of the Tenant. The Landlord was given an opportunity to present relevant evidence and make relevant submissions. I have considered all relevant evidence provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. Is the Tenant entitled to recover the filing fee?
3. Is the Landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

A written tenancy agreement was submitted. The tenancy agreement started January 01, 2022, and was for a fixed term of one year. Rent was \$2,385.25 per month due on the first day of each month. The Tenant paid a \$820.00 security deposit.

The Landlord sought to keep the security deposit towards unpaid rent.

The Notice was submitted. The Landlord testified that the Notice was on the RTB form, and all pages were served on the Tenant. The Notice is addressed to the Tenant and a co-tenant, although the Landlord did not use the Tenant's full legal name. The Notice refers to the rental unit. The Notice is signed and dated by the Landlord. The Notice has an effective date of March 16, 2022. The Notice states that the Tenant failed to pay \$2,385.25 in rent due March 01, 2022.

The Tenant states in the Application that they received the Notice March 06, 2022. The Application was filed March 07, 2022.

The Landlord testified that the Tenant currently owes for March and April rent for a total of \$4,770.50. The Landlord stated that their documentary evidence shows the Tenant failed to pay March and April rent.

Analysis

Section 26 of the *Act* states:

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.

The Notice was issued pursuant to section 46 of the *Act*.

I dismiss the Tenant's dispute of the Notice without leave to re-apply because the Tenant moved out of the rental unit prior to the hearing and therefore accepted the Notice. The Tenant cannot continue to dispute the Notice when they have moved out of the rental unit. Further, the Tenant did not appear at the hearing to explain the statements in the Application or provide testimony about the dispute. As well, there is no admissible documentary evidence before me from the Tenant.

Given the dispute of the Notice is dismissed, the Tenant has not been successful in the Application and the request to recover the filing fee is also dismissed without leave to re-apply.

Given the above, the Application is dismissed.

Sections 55(1) and (1.1) of the *Act* state:

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 decline to issue the Landlord an Order of Possession because the Tenant has moved out of the rental unit and there is no need for an Order of Possession.

In relation to the Monetary Order, I must consider whether the following circumstances apply:

(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.

I have reviewed the Notice and find it complies with section 52 of the *Act*. I have dismissed the Application without leave to re-apply. I find section 55(1.1) of the *Act* applies.

RTB Policy Guideline 03 addresses orders issued pursuant to section 55(1.1) of the *Act* and states at page three:

To determine whether an amount owing is for unpaid rent and must be ordered at the hearing, the director must make a finding about when the tenancy ends or ended.

If the tenant has vacated or abandoned the rental unit prior to the date of the dispute resolution hearing, the date the tenancy ended is the date that the tenant vacated or abandoned the rental unit. Only rent owing up until this date would constitute unpaid rent for the purpose of section 55(1.1) of the RTA (section 48(1.1) of the MHPTA).

I find the tenancy ended April 30, 2022, when the Tenant moved out of the rental unit. The Landlord is entitled to unpaid rent up until April 30, 2022.

I accept the undisputed testimony of the Landlord that March and April rent is currently outstanding and award the Landlord the \$4,770.50 sought. The Landlord can keep the \$820.00 security deposit pursuant to section 72(2) of the *Act*. The Landlord is issued a Monetary Order for the remaining \$3,950.50 pursuant to section 67 of the *Act*.

Conclusion

The Application is dismissed without leave to re-apply.

I decline to issue the Landlord an Order of Possession because the Tenant has moved out of the rental unit and there is no need for an Order of Possession.

The Landlord is entitled to recover \$4,770.50 in unpaid rent. The Landlord can keep the \$820.00 security deposit. The Landlord is issued a Monetary Order for the remaining \$3,950.50. This Order must be served on the Tenant. If the Tenant fails to comply with this Order, it may be filed in the Small Claims division of the Provincial Court and enforced as an order of that court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: June 23, 2022

Residential Tenancy Branch