



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **RR, CNR, MNDCT, RP, OLC, 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. An order of possession based on unpaid rent;
2. For a monetary order for unpaid rent; and
3. To recover the cost of filing the application.

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 5, 2022;
2. To reduce rent for repairs, service or facilities agreed upon but not provided;
3. For monetary compensation for monetary loss or other money owed; and
4. To recover the cost of filing the application.

Both parties appeared, although the tenant was late. Both parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form and make submissions at the hearing.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances both parties filed Applications for Dispute Resolution. The only related issues are the tenant's request to cancel the Notice, which I must consider unpaid rent pursuant to section 55 of the Act and the landlord's application for an order of possession and a monetary order for unpaid rent. I will, therefore, only consider these issues.

As the balance of the tenant's application are not sufficiently related to be determined during this proceeding, I dismiss with leave to reapply, the balance of the tenant's application.

Issues to be Decided

Is the Notice valid?

Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The tenancy began on August 1, 2017. Current rent in the amount of \$2,030.00 was payable on the first of each month. A security deposit of \$1,000.00 was paid by the tenant.

The parties agreed that the tenancy had ended. The tenant stated that they had found new living accommodation for June 15, 2022, although they were still removing their belongings after that date.

The parties agreed that the tenant did not pay rent for April, May and June 2022.

Analysis

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

- 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.

In this case, I find the tenant breached section 26 of the Act, as they had no authority under the Act to withhold the rent. A tenant cannot withhold rent simply because they feel entitled to do so. I find the tenant failed to pay rent for April, May and June 2022. I find the Notice issued was valid. However, as the tenancy has ended, I find it not necessary to issue an order of possession.

I find the landlord is entitled to recover the unpaid rent for April, May and June 2022 in the total amount of **\$6,090.00**, pursuant to section 55 and 67 of the Act.

I find that the landlord has established a total monetary claim of **\$6,190.00** 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 **\$1,000.00** to offset the monetary claim in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$5,190.00**.

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.

As the tenant was unsuccessful with their application to cancel the Notice and I had found the tenant breach the Act. I dismiss the tenant's application to recover the cost of the filing fee.

Conclusion

The Notice issued was valid. The landlord does not require an order of possession. The landlord is granted a monetary order for the unpaid rent and is authorized to keep the security deposit to offset the claim. The landlord is granted a monetary order for the balance due.

The tenant's application to cancel the Notice is dismissed without leave to reapply. The balance of the tenant's application is dismissed with leave to reapply.

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 11, 2022

Residential Tenancy Branch