



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC

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 June 15, 2022, and to have the landlord comply with the Act.

Both parties appeared, 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

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

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 the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant’s request to set aside the Notice. The balance of the tenant’s application is dismissed, with leave to re-apply.

Issue to be Decided

Should the Notice be cancelled?

Background and Evidence

The tenancy agreement shows the parties entered into a tenancy agreement which commenced on April 1, 2021. Rent in the amount of \$1,500.00 was payable on the 1st day of each month. The parties agreed that the tenant paid a security deposit of \$750.00. The landlord disagreed that the tenant paid the required pet damage deposit.

On July 26, 2022, the parties were at a previous hearing based on an application filed by the tenant on April 4, 2022, regarding the 60-40 split of utilities as set out in the tenancy agreement. The Arbitrator determined that the tenant was bound by the term of the tenancy agreement to pay their portion of utilities.

The parties agreed that the tenant received the Notice on June 15, 2022, for unpaid utilities in the amount of \$872.39.

The landlord testified that the tenant has not paid their portion of utilities since January 2022, and they served the tenant with written demand on April 4, 2022. The landlord stated that the tenant did not pay the outstanding utilities and has failed to pay subsequent utilities and the total amount owed is \$1,510.98.

The tenant confirmed they did not pay the outstanding utilities in the Notice and has failed to pay subsequent utilities and does not dispute the amount of \$1,510.98.

Analysis

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

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.*

(6) If

- (a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and
- (b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them, the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

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, the tenant has failed to pay the utilities under the terms of the tenancy agreement and on April 4, 2022, the tenant was given a written demand for payment of them. The tenant did not pay the unpaid utilities and more than 30 days had passed before the landlord issued the Notice.

Although the tenant filed an application for dispute resolution within the time limit permitted under the Act, I find the tenant's application had no merit as the tenant admitted they have not paid the outstanding utilities and has failed to pay subsequent utilities. Therefore, I find the Notice is valid and remains in full force and effect. The tenant's application to cancel the Notice is dismissed.

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.

As the landlord has accepted occupancy rent for November, I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **1:00PM on November 30, 2022**. A copy of this order must be served upon 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.

As the tenant admitted that they have failed to pay the outstanding utilities and the amount was not in dispute. I find the tenant owes the landlord for the unpaid utilities the total amount of **\$1,510.98**. I find it reasonable in the circumstances to offset the amount owed by the tenant with the security deposit. I authorize the landlord to keep the tenant's security deposit of \$750.00 in partial satisfaction of the amount owed. I grant the landlord a monetary order for the balance due of **\$760.98**. 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 an order of possession and a monetary order for unpaid utilities. I authorize the landlord to keep the security deposit in partial satisfaction and is granted a monetary 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: November 04, 2022

Residential Tenancy Branch