



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, CNR, MNR, FF

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and for a monetary order for unpaid rent and the filing fee. The tenant applied for an order to cancel the notice to end tenancy. The tenant also applied to recovery the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The tenant filed proof of having served the landlord with his evidence by registered mail to the business address of the landlord. Both parties gave affirmed testimony.

Issues to be decided

Is the landlord entitled to an order of possession or should the notice to end tenancy be set aside? Is the landlord entitled to a monetary order for unpaid rent and the filing fee?

Background and Evidence

The tenancy agreement submitted into evidence by the tenant states that the tenancy commenced on March 15, 2021, and that the rent was reduced to \$325.00 for services rendered by the tenant. The tenancy agreement does not specify the amount that the rent is reduced by. The landlord maintained throughout the hearing that the full rent was \$650.00 and that the tenant had paid rent in this amount for the first two months of the tenancy. The tenant disagreed and stated that the monthly rent was \$325.00. Both parties agreed that rent was payable on the first of the month.

The parties attended a hearing on October 06, 2022, to address the landlord's application for an order of possession and a monetary order for unpaid rent. The landlord had served the tenant with a notice to end tenancy dated April 30, 2022, for \$3,900.00 in unpaid rent.

In a decision dated October 10, 2022, the arbitrator found that despite the landlord's testimony about the monthly rent being \$650.00, the tenancy agreement provided a reduced rent of \$325.00 for services rendered by the tenant. Since the tenancy agreement does not specify the amount that the rent was reduced by, for services rendered by the tenant, the arbitrator, in the decision dated October 10, 2022, decided that rent payable on the first of each month was \$325.00, as per the tenancy agreement submitted into evidence. During both hearings on October 06, 2022 and this date, January 12, 2023, the tenant admitted that he has not provided services to the landlord since March 2022.

In the decision dated October 10, 2022, based on the determination of the monthly rental amount of \$325.00, the rental arrears as of August 2022, were calculated to be \$975.00 and not \$3,900.00 as stated by the landlord on the notice to end tenancy dated April 30, 2022. In the decision dated October 10, 2022, the arbitrator stated as follows:

I find that the amount actually owed by the Tenants for rental arrears of \$975.00 is substantially less than the \$3,900.00 in rental arrears the 10 Day Notice stated the Tenants owed.

The arbitrator cited the above as one of the reasons why the notice to end tenancy dated April 30, 2022, did not comply with sections 46(1) and 52 of the *Act* and was therefore dismissed and the tenancy continued.

During the hearing, both parties agreed that the tenant paid rent of \$325.00 for September, on September 07, 2022, but did not pay the rental arrears of \$975.00. On October 01, 2022, the tenant did not pay rent for October 2022 which prompted the landlord to serve the tenant with a notice to end tenancy on October 11, 2022, for the total amount of \$1,300.00 in unpaid rent. This total amount included \$975.00 in rental arrears plus \$325.00 for October's rent. The tenant disputed the notice by making an application for dispute resolution on October 18, 2022.

The parties agreed that the next time the tenant paid rent was on November 02, 2022, in the amount of \$650.00 which covered rent for November and December 2022. The tenant also paid January's rent of \$325 on December 29, 2022.

Analysis

Based on the findings as outlined in the decision dated October 10, 2023, I accept that the monthly rental amount is \$325.00 and the rental arrears for the months of July 2021 to August 2022 inclusive is \$975.00.

Based on the sworn testimony of both parties, I accept the landlord's evidence in respect of the claim. The tenant is deemed to have received the notice to end tenancy for unpaid rent, on October 14, 2022, and did not pay rent within five days of receiving the notice to end tenancy. The tenant made an application, pursuant to Section 46 to set aside the notice to end a residential tenancy, in a timely manner.

At the time of this hearing, I find that the tenant owes the landlord \$975.00 in rental arrears plus \$325.00 for rent for October 2022. Accordingly, the notice to end tenancy is upheld and pursuant to section 55(2) I am issuing a formal order of possession effective two days after service on the tenant. The Order may be filed in the Supreme Court for enforcement.

I also grant the landlord his application for unpaid rent in the total of \$1,300.00. Since the landlord has proven his case, I grant him the recovery of the filing fee of \$100.00. Overall, the landlord has established a claim of \$1,400.00. I grant the landlord an order under section 67 of the Residential Tenancy Act for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The tenant is unsuccessful in his application and therefore must bear the cost of filing his application. The tenant's application is dismissed in its entirety.

Conclusion

I grant the landlord an order of possession effective two days after service on the tenant and a monetary order for **\$1,400.00**.

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: January 13, 2023

Residential Tenancy Branch