



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding CASCADIA APARTMENT RENTALS
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FFL

Introduction

This matter proceeded by way of an ex parte Direct Request Proceeding, pursuant to section 55(4) of the Residential Tenancy Act (the "Act"), and dealt with the landlord's Application for Dispute Resolution (the Application) for:

- an Order of Possession based on unpaid rent pursuant to sections 46 and 55 of the Act
- a Monetary Order for unpaid rent pursuant to section 67 of the Act (\$1,524.00)
- authorization to recover the filing fee for this application from the tenant pursuant to section 72 of the Act (\$100.00)

On February 15, 2023, the landlord's application was considered. The Adjudicator determined that this matter should be adjourned to a participatory hearing, which was scheduled for March 17, 2023, at 11:00am. The interim decision should be read in conjunction with this Decision as it made findings of service on the tenant.

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.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

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

Background and Evidence

The parties agreed that the tenancy began on September 1, 2008. The parties agreed that the current rent in the amount of \$1,600.00 payable on the first of each month. A security deposit of \$650.00 was paid by the tenant.

The landlord testified that the tenant was served with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") issued on December 6, 2022, for unpaid rent in the amount of \$1,524.00. The landlord stated the tenant had a credit on their account at the time the Notice was issued.

The landlord testified that the Notice was posted to the tenant's door on December 6, 2022. Filed in evidence is a copy of the proof of service showing that it was witnessed by a third party.

The tenant testified that they never received the Notice, until January 4, 2023, when they picked up the landlord's application at the post office. The tenant stated that they dropped off a cheque to the landlord on December 16, 2022, in the amount of \$1,300.00. I note a copy of the cheque was filed in evidence; I note this did not have the current landlord's name and was not the full amount of rent due.

The tenant testified that the landlord claimed they never received cheque issued on December 16, 2022, so their friend attended the head office on January 6, 2023, and provided them with a money order for \$1,300.00 for December 2022 rent and a personal cheque of \$1,250.00 for January 2023 rent.

The tenant stated that the rent has been paid to the landlord by cheque and money orders by their friend.

The landlord argued the tenant was served by posting to the door and they never received any money from the tenant until January 2023. The landlord stated that they have not cash the cheques or money orders as they do not indicate it is being paid on

behalf of the tenant as it was paid by a person that they did not want to create a tenancy with. The landlord stated even when added up there is still rent owed.

Analysis

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

In this case, the landlord provided proof that the tenant was served with the Notice on December 6, 2022, which had an effective date of December 16, 2022. I find it highly coincidental that the tenant issued a cheque for rent on same date the tenancy was to end in the Notice. However, it was not in the current landlord's name or for the full amount due. Rent is \$1,600.00, the amount in the Notice was \$1,524.00 not \$1,300.00 as shown in the cheque.

Further, even if I accept the first time the tenant saw the Notice was on January 4, 2023, which I find highly unlikely. I find the tenant did not pay the full amount owed within 5 days, as the Notice required the tenant to pay \$1,524.00 not \$1,300.00. Nor did the tenant file an application to dispute the Notice. Therefore, I find the Notice is valid and remains in full force and effect.

As I am satisfied that the rent due of \$1,524.00 was not paid within 5 days, at most the tenant provided a cheque or money order for \$1,300.00. I find the landlord is entitled to an order of possession pursuant to section 55 of the Act. I have extended the effective date of the Notice to March 31, 2023, as some occupancy rent has been paid. This order may be filed in the Supreme Court and enforced as an order of that Court.

I have not considered the landlord's monetary claim for unpaid rent. The landlord can cash the money orders and cheques that were paid by JH. This does not create a tenancy with JH. JH clearly is not a tenant under the tenancy agreement. The landlord is at liberty to reapply for unpaid once they can confirm the amount owing.

As the landlord was successful with their application, I find the landlord is entitled to recover the \$100.00 cost of the filing fee. I authorize the landlord to keep \$100.00 from the tenant's security deposit in full satisfaction of this award.

Conclusion

The landlord is granted an order of possession. I dismiss the landlord's application for a monetary order for unpaid rent with leave to reapply. The landlord can keep \$100.00 from the tenant's security deposit to recover the cost of the filing fee.

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: March 20, 2023

Residential Tenancy Branch