



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR

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 December 7, 2022.

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

In this case, the tenant did not submit a copy of the Notice with their application. At the hearing the parties gave testimony on the Notice, and I allowed the parties to submit a copy of the Notice after the hearing. I find this was not prejudicial to either party. A copy of the Notice was provided by the landlord after the hearing.

Issue(s) to be Decided

Should the Notice be cancelled?

Background and Evidence

The tenancy began on October 1, 2022. Rent in the amount of \$3,700.00 was payable on the first of each month. A security deposit of \$1,850.00 was paid by the tenant.

The tenant confirmed in their application that they received the Notice, in person, on December 7, 2022.

The tenant submits in their application the following details for disputing the Notice:

“Amounts of money not owed or due”

At the hearing the tenant stated that they did not pay the rent for December 2022 and admits having failed to pay all subsequent rent because of personal circumstances.

The landlord stated that they seek an order of possession and a monetary order for the unpaid rent and unpaid utilities.

Analysis

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

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some of the rent. Section 46(1) of the Act allows landlords to end a tenancy if the tenant does not pay rent on time by issuing a *10 Day Notice to End Tenancy for Unpaid Rent*.

Upon review of the Notice, I find the Notice is completed in accordance with the requirements of section 52 of the Act.

Under the legislation the tenant may dispute the Notice for specific reasons, such as they have proof that their rent was paid or that the tenant had the right under the Act to deduct all or a portion from their rent, such as an order from an Arbitrator.

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. In fact, the tenant provided false information in their application. The tenant admitted at the hearing they did not pay the rent listed in the Notice or any subsequent rent. Therefore, I dismiss the tenant's application without leave to reapply.

Further, the evidence of the parties supports rent in the amount of \$14,800.00, remains unpaid.

Although the tenant did not pay utilities as required, I will only grant the landlord the amount listed in the Notice for unpaid utilities, which is the amount of \$110.50, as section 55(1.1) allows me to grant unpaid rent and as the utilities were due and owing the landlord was entitled to treat that amount as unpaid rent in the Notice. The landlord is at liberty to apply for subsequent unpaid utilities.

As the tenant's application is dismissed, I find the landlord is entitled to an order of possession, pursuant to section 55(1) of the Act. I further find the landlord is entitled to a monetary order pursuant to section 55 (1.1) of the Act for the unpaid rent.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on 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.

I find the landlord is entitled to a monetary order, pursuant to section 55(1.1) for the unpaid rent, and utilities in the amount of **\$14,910.50** .

Under section 38(4)(b) of the Act, the landlord is ordered to retain the security deposit of \$1,850.00 as partial satisfaction of the monetary award. The landlord is granted a monetary order for the balance due of **\$13,060.50**. This order may be filed in the Provincial Court and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

In this matter the landlord had obtained prior Residential Tenancy Branch decision, which the landlord obtained from the Provincial Court and Supreme Court. **It appears the tenant has developed a pattern of obtaining living accommodation and then failing to pay a significant amount of rent.**

One decision refers to the tenant's failure to pay rent in the amount of \$19,500.00 and another decision refers to the tenant's failure to pay rent in the amount of \$18,500.00 and at today's hearing the tenant has admitted to failing to pay rent in the amount of \$14,800.00. **I find it appropriate in this case to refer the tenant to my supervisor for consideration for a referral to the Compliance and Enforcement Unit for investigation.**

I also find it appropriate to grant the landlord a substitutes service order to be allowed to serve the tenant by email. This would include the above monetary order, order of possession and any future application for dispute resolution, as the tenant confirmed

their email address in the digital file. I have noted the tenants email address on the covering page of this decision.

The landlord may file a copy of this Decision at any future hearing to show they have the authority under the Act, to serve the tenant by email.

Conclusion

The tenant's application is dismissed. Landlord granted an order of possession and a monetary order for unpaid rent.

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 14, 2023

Residential Tenancy Branch