



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, RP, OLC

Introduction

On March 8, 2023, the tenant applied for:

- (i) an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to 46(4)(b) of the *Residential Tenancy Act* (the “Act”);
- (ii) an order for regular repairs pursuant to section 32 of the Act; and
- (iii) an order requiring the landlord to comply with the Act pursuant to section 62 of the Act.

Preliminary Issue- Unrelated Claims

Rules of Procedure 2.3 states that claims made in an application for dispute resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims.

It is my determination that the claim regarding the Notice is not sufficiently related to the tenant’s other claims to warrant that they be heard together. I exercise my discretion to dismiss the tenant’s other claims with leave to reapply and will deal only with the cancellation of the Notice.

Issue(s) to be Decided

1. Is the tenant entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession?

Background and Evidence

In reaching this decision, I have considered all relevant evidence that complied with the *Rules of Procedure*. Only the necessary oral and documentary evidence that helped resolve the issues of the dispute and explain the decision is included below.

The tenancy began February 1, 2023. Rent is \$2,800.00 due on the first day of the month. The landlord currently retains a \$1,400.00 security deposit. There is a copy of the written tenancy agreement in evidence.

The landlord served the Notice on March 8, 2023 by delivering to the tenant in person, who was there to receive it. Page two of the Notice indicates that the tenant did not pay rent in the amount of \$1,700.00 that was due on March 1, 2023. All pages of the Notice were served and submitted into evidence.

The landlord affirmed that the tenant last paid the rent in full in February 2023. The landlord further affirmed that the tenant has outstanding unpaid rent as follows:

Month	Rent Due	Rent Paid	Date Paid	Amount Owing
February 2023	\$2,800.00	\$2,800.00	February 1, 2023	0
March 2023	\$2,800.00	\$1100.00	March 1, 2023	(\$1,700.00)
April 2023	\$2,800.00	0	n/a	(\$2,800.00)
			Total	(\$4,500.00)

The tenant affirmed that the tenant's mother had attempted on March 1, 2023 to transfer the \$1,700.00 of rental arrears (relating to March 2023's rent) to the landlord. The tenant further affirmed that the landlord never received this \$1,700.00 as the tenant's mother had transferred the money to another person's account rather than the landlord's by accident. The tenant affirmed that there are rental arrears in the amount of \$4,500.00.

Analysis

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*.

The landlord's evidence shows that the tenant only partially paid the rent due on March 1, 2023 and has not paid any rent since then. Therefore, I find on a balance of probabilities that the Notice was given for a valid reason. I also find that the Notice complies with the form and content requirements of section 52. As a result, the tenant's application to cancel the Notice is dismissed.

Based on the above findings, the landlord is granted an order of possession under section 55(1) of the Act. A copy of the order of possession is attached to this Decision and must be served on the tenant.

Since the application relates to a section 46 notice to end tenancy, the landlord is entitled to an order for unpaid rent under section 55(1.1) of the Act. Therefore, the tenant is ordered to pay \$4,500.00 in unpaid rent to the landlord.

Pursuant to sections 38 and 72 of the Act, the landlord is ordered to retain the \$1,400.00 security deposit as partial satisfaction of the payment order. A monetary order for the remaining amount of \$3,100.00 is attached to this Decision and must be served on the tenants.

Conclusion

The application is dismissed without leave to reapply. The landlord is awarded an order of possession and a monetary award in the amount of \$3,100.00.

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: April 11, 2023

Residential Tenancy Branch