



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, FFT

Introduction

The tenant applied on March 9, 2023 for (i) an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to section 46(4)(b) of the *Residential Tenancy Act* (the “Act”); and (ii) an order to recover the cost of the filing fee under section 72 of the Act.

The landlord attended the hearing. No one dialled in on behalf of the tenant during the hearing, which lasted from 1:00 P.M. to 1:30 P.M.

Issues

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

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 November 15, 2022. Rent is \$2,200.00 due on the first day of the month. The landlord currently retains a \$1,100.00 security deposit.

The landlord served the Notice on March 2, 2023 by attaching a copy to the door of the rental unit. Page two of the Notice indicates that the tenant did not pay rent in the amount of \$1,200.00 that was due on March 1, 2023.

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 Owning
February 2023	\$2,200.00	\$2,200.00	January 25, 2023	0
March 2023	\$2,200.00	\$600.00	March 2, 2023	(\$1,600.00)
April 2023	\$2,200.00	0	n/a	(\$2,200.00)
			Total	(\$3,800.00)

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 \$3,800.00 in unpaid rent to the landlord.

Pursuant to sections 38 and 72 of the Act, the landlord is ordered to retain the \$1,100.00 security deposit as partial satisfaction of the payment order. A monetary

order for the remaining amount of \$2,700.00 is attached to this Decision and must be served on the tenant.

Since the tenant was not successful in its application, the tenant's application to recover the cost of the filing fee under section 72 of the Act is dismissed.

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 \$2,700.00.

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 13, 2023

Residential Tenancy Branch