



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR-MT, MNDCT, OLC, CNMN

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) filed by the Tenant under the *Residential Tenancy Act* (the Act) on December 8, 2022, seeking:

- An extension to the time limit set out under section 46(4) of the Act;
- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice);
- Compensation for monetary loss or other money owed; and
- An order for the Landlord to comply with the Act, regulation, or tenancy agreement.

The hearing was convened by telephone conference call at 9:30 am on April 20, 2023, and was attended by an agent for the Landlord, HW (Agent), who is also one of the named respondents. The Tenant did not attend. All testimony provided was affirmed. The Agent was provided the opportunity to present their evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing.

The Agent was advised that interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The Agent was asked to refrain from speaking over me and to hold their questions and responses until it was their opportunity to speak. The Agent was also advised that personal recordings of the proceeding were prohibited under the Residential tenancy branch Rules of Procedure (Rules of Procedure) and confirmed that they were not recording the proceedings.

The Notice of Dispute Resolution Proceeding (NODRP) states the date and time of the hearing, that the hearing will be conducted by telephone conference call, and provides

the phone number and access code for the hearing. It also instructs participants that they are to call into the hearing themselves no more than five minutes before the start of the hearing. I confirmed that the details shown in the NODRP were correct, that the Agent was able to attend the hearing using this information, and I note that the Tenant advised the Residential Tenancy Branch on April 14, 2023, that the hearing was still required. The Agent stated that neither they nor the Landlord received anything in relation to this hearing from the Tenant, and only became aware of the hearing after receiving an auto-generated email from the Branch, after which they called the Branch, were advised of the hearing, and provided with a courtesy copy of the NODRP. Although the line remained open for the full 12-minute duration of the hearing, neither the Tenant nor an agent acting on their behalf appeared to provide evidence or testimony for my consideration.

Branch records show that the Agent called the Branch on April 6, 2023, regarding an auto-generated reminder email, stated that they were unaware of the hearing, and were provided with a courtesy copy of the NODRP. I therefore accept the Agent's affirmed and undisputed testimony that neither they nor the Landlord were served with any documentation in relation to this hearing by the Tenant, including but not limited to the NODRP. However, as the matter of outstanding rent was still at issue, and the Agent wished to proceed with the hearing as scheduled, the hearing commenced as scheduled despite the absence of the Tenant or an Agent acting on their behalf pursuant to rules 7.1 and 7.3 of the Rules of Procedure. Pursuant to rule 7.3, of the Rules of procedure, and as the Agent stated that the Tenant vacated the rental unit at the start of January 2023, I dismissed the Tenant's Application, in its entirety, without leave to reapply.

The hearing therefore proceeded only on the matter of whether the Landlord was entitled to the recovery of unpaid rent pursuant to section 55(1.1) of the Act.

Preliminary Matters

As the respondent HW stated that they are a friend of the Landlord, not the Landlord, and only the respondent VY is named as a landlord in the tenancy agreement before me, I therefore amended the Application to remove HW as a respondent/landlord.

Issue(s) to be Decided

Is the Landlord entitled to the recovery of unpaid rent pursuant to section 55(1.1) of the Act?

Background and Evidence

The Agent stated that on December 1, 2022, the 10 Day Notice was emailed and texted to the Tenant. The 10 Day Notice before me is on the branch form, is signed and dated, contains an effective date of December 10, 2022, and states that as of December 1, 2022, the Tenant owed \$3,625.00 in outstanding rent. Although the 10 Day Notice states it was signed on December 1, 2020, the Agent stated that this is a typo, and that it was signed on December 1, 2022.

The Agent stated that the Tenant still owes \$3,625.00 in outstanding rent, and as the Landlord still holds the Tenants \$700.00 security deposit in trust, the Landlord wishes to withhold this deposit towards the outstanding rent owed.

Analysis

Based on the affirmed and undisputed testimony and documentary evidence before me, I am satisfied that a tenancy to which the Act applies existed between the Tenant and the Landlord, which ended at the beginning of January 2023 as the result of the 10 Day Notice, and that \$3,625.00 in outstanding rent is owed. I am satisfied that the 10 Day Notice was served on and received by the Tenant on December 1, 2022, as they acknowledged this in the Application. I am also satisfied that the 10 Day Notice complies with section 52 of the Act, except for the date of the signature, which I amend to December 1, 2022, pursuant to section 68(1) of the Act.

Based on the above, and as the Tenant's Application seeking cancellation of the 10 Day Notice is dismissed, I therefore grant the Landlord recovery of the \$3,625.00 in outstanding rent owed pursuant to section 55(1.1) of the Act. Pursuant to section 72(2)(b) of the Act, I grant the Landlord authorization to retain the Tenant's \$700.00 security deposit towards the outstanding rent amount owed. Pursuant to section 67 of the Act, I therefore grant the Landlord a monetary order in the amount of **\$2,925.00** for the outstanding balance owed, and I order the Tenant to pay this amount to the Landlord.

Conclusion

The Tenant's Application is dismissed without leave to reapply.

Pursuant to section 72(2)(b) of the Act, the Landlord is authorized to retain the Tenant's \$700.00 security deposit.

Pursuant to sections 55(1.1) and 67 of the Act, I grant the Landlord a monetary order in the amount of **\$2,925.00**. The Landlord is provided with this order in the above terms and the Tenant must be served with this order as soon as possible. Should the Tenant fail to comply with this order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court

This decision is made on authority delegated to me by the Director of the Branch under Section 9.1(1) of the Act.

Dated: April 20, 2023

Residential Tenancy Branch