



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, FF

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 March 7, 2023, and to recover the cost of the filing fee.

This matter was set for hearing by telephone conference call at 9:30 A.M on this date. The line remained open while the phone system was monitored for ten minutes and the only participant who called into the hearing during this time was the landlord. Therefore, as the tenant did not attend the hearing by 9:40 A.M, and the landlord appeared and was ready to proceed, I dismiss the tenant’s application without leave to reapply.

However, I must still consider the provisions of section 55 of the Act as I must grant the landlord an order of possession and a monetary order for the payment of rent.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to relevant facts and issues in this decision.

Issue 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 tenancy began on June 15, 2019. Rent in the amount of \$1,345.00 was payable on the first of each month. A security deposit of \$650.00 was paid by the tenant.

The tenant submits in their application that they received the Notice on March 22, 2023.

The details within the tenant's application is written as follows:

I am disputing this notice because the landlord is claiming that she served me a notice to end tenancy for cause and has filled a dispute to End Tenancy for Cause with tenancy end date February 28, 2023. This means that our Tenancy has ended and the landlord is required to return all of my rent checks.

The landlord's agent testified that they do not need an order of possession as they had received an order of possession on April 4, 2023, and the order was enforced by the bailiffs on April 26, 2023. I have noted the file number on the covering page of this decision.

The landlord's agent testified that the tenant failed to pay rent for March 2023 and was served with the Notice. The agent stated that they received money on April 1, 2023, which was applied to March 2023 rent; however, the tenant failed to pay rent for April 2023. The landlord seeks a monetary order for the unpaid rent in the amount of \$1,345.00 and to offset that amount with the security deposit.

Analysis

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

In this case, even if I accept the tenant's submission that the tenancy legally ended on February 28, 2023, by way of a notice to end tenancy for cause, clearly the tenant had not vacated as required by the Act and was required to pay rent to the landlord even on an occupancy basis. I find the tenant breach the Act when they failed to pay rent.

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

Under section 55(1) of the Act, I must grant the landlord an order of possession if the tenant's application is dismissed; however, I do not need to consider whether the landlord is entitled to an order of possession because an order of possession was issued on April 4, 2023, and the tenant was removed by the bailiff on April 26, 2023.

Under section 55(1.1) of the Act, I must grant the landlord a monetary order for payment of rent due under the terms of the tenancy agreement. I accept the landlord's agent

testimony that the rent received on April 1, 2023, was applied to the rent owed for March 2023, leaving rent for April 2023 due and owing. I find that the landlord is entitled to monetary order for the unpaid rent, in the amount of **\$1,345.00**.

I also find it appropriate to offset the landlords monetary award with the tenant's security deposit. I order that the landlord retain the security deposit of **\$650.00** in partial satisfaction of rent due and I grant the landlord an order under section 67 of the Act for the balance due of **\$725.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The tenant's application is dismissed. The landlord does not require an order of possession as the tenant has been removed from the rental unit by the bailiff. The landlord is authorized to keep the security deposit in partial satisfaction of rent due. The landlord is granted a monetary for the balance due of 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: May 02, 2023

Residential Tenancy Branch