



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding ACTION PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR,OPR, MNR, FF

Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application is seeking orders as follows:

1. For an order of possession;
2. For a monetary order for unpaid rent; and
3. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") issued on April 4, 2023; and
2. To suspend or set conditions on the landlord's right to enter the rental unit.

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

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

Should the Notice be cancelled?

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 July 1, 2022. Rent in the amount of \$675.00 was payable on the first of each month. A security deposit of \$375.00 was paid by the tenant.

The tenant submits in their application that they received the Notice on April 4, 2023. The tenant did not submit their application until April 11, 2023. The tenant testified that they did not pay the outstanding rent for April 2023 and did not pay rent for May 2023. The tenant stated that they had no authority under the Act to withhold rent; however, they have been suffering with their mental health.

The landlord confirms that they are seeking an order of possession and a monetary order for the unpaid rent and the unpaid utilities.

Analysis

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

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, although late, I find the tenant's application had no merit as the tenant admitted rent was not paid within 5 days after receiving the Notice and rent for April and May 2023 remain unpaid. I find the tenant breached the Act when they failed to pay the rent. I find the Notice is valid and remains in full force. Therefore, I dismiss the tenant's application without leave to reapply.

As the tenancy is legally ending, I find it unnecessary to make any orders against the landlord.

As the tenant's application is dismissed, I find the landlord I must grant the landlord an order of possession and a monetary order for repayment of unpaid rent, pursuant to section 55 of the Act.

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 that the landlord is entitled to monetary order for the unpaid rent, pursuant to section 55(1.1) of the Act in the amount of \$1,350.00. I find the landlord has established unpaid utilities of \$100.00 are owed for April and May 2023.

I find that the landlord has established a total monetary claim of **\$1,550.00** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$337.50 and interest of \$2.70** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$1,209.80**.

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 is granted an order of possession and a monetary order as stated above.

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 30, 2023

Residential Tenancy Branch