



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, LAT, FFT
OPR-DR, MNR-DR, FFL

Introduction

This hearing dealt with the twice adjourned cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”). The matter was set for a conference call.

The Tenant’s application for Dispute Resolution was made on January 9, 2023. The Tenant applied to cancel a 10-Day Notice to End Tenancy for Unpaid Rent, to request an order for authorization to change the locks to the rental unit, and to recover their filing fee.

The Landlord’s Direct Request Application was made on January 26, 2023. As the Tenant had already filed a dispute of the Notice, the Landlord’s application was crossed with the Tenant’s applications to be heard at the same time. The Landlord applied for an order of possession to enforce a 10-Day Notice for Unpaid Rent and a monetary order for unpaid rent and to recover their filing fee.

The Landlord also filed an amendment to their Direct Request Application on April 3, 2023; however, due to service issues, the Landlord’s amendment application was not served to the Tenant until April 27, 2023, seven days before the date of these proceedings. As the Residential Tenancy Branch Rules of Procedure require that an amendment application be served on the other party no less than 14 days before the date of a hearing, the Landlord’s amendment application was not accepted into these proceedings.

The Landlord attended the conference call hearing; however, the Tenant did not. As the Tenant is also an applicant in this hearing, I find that the Tenant had been duly notified of the Notice of Hearing in accordance with the *Act*.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Should the 10-Day Notice dated January 4, 2023, be cancelled?
- If not, is the Landlord entitled to an order of possession and a monetary order for unpaid rent?
- Is the Landlord entitled to an order of possession and a monetary order for unpaid rent, to enforce their Notice dated January 17, 2023?
- Is the Landlord entitled to the return for their filing fee for this application?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement recorded that the tenancy began on November 16, 2022, and that rent in the amount of \$2,800.00 is to be paid by the first day of each month. That a security deposit of \$1,400.00 and a pet damage deposit of \$1,400.00 was paid to the Landlord for this tenancy. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

This hearing was scheduled for a teleconference hearing on this date.

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. Rule 7.3 of the Rules of Procedure stipulates that an Arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

This hearing was scheduled to commence at 9:30 a.m. on May 5, 2023. I called into the teleconference at 9:30 a.m.; 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 9:41 a.m. and the Landlord appeared and was ready to proceed, I dismiss the Tenant's application without leave to reapply.

The Landlord testified that they served a 10-Day Notice to the Tenant on January 17, 2023, by posting a copy of the Notice to the front door of the rental unit. The 10-Day Notice recorded an effective date of January 27, 2023, and an outstanding rent amount of \$2,800.00. The Notice informed the Tenant of the right to dispute the Notice within 10 days after receiving it. The Landlord submitted a copy of the Notice into documentary evidence.

The Landlord testified that the Tenant moved out of the rental unit on March 21, 2023, but that as of the date of these proceedings, the Tenant had not paid the full outstanding rent due January 16, 2023, as indicated on the Notice to end tenancy.

The Landlord also testified that the Tenant had not paid the rent due February 16, 2023, or March 16, 2023.

The Landlord is requesting that their Notice be enforced and that they be granted a monetary order of the unpaid for this tenancy, for the period between January 16 to March 21, 2023.

Analysis

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

I find that the Tenant received the Notice on January 20, 2023, three days after it was posted to the front door of the rental unit, and that they did apply to dispute the Notice. 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 was the Landlord.

Rules 7.1 and 7.3 of the Rules of Procedure provide as follows:

7.1 The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

7.3 If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

As the Tenant did not attend these proceedings, I find that the Tenant's Application for Dispute Resolution has been abandoned.

I accept the Landlord's testimony that this tenancy ended on March 21, 2023, the date the Tenant moved out and returned the rental unit to the Landlord.

I also accept the undisputed testimony of the Landlord that the Tenant has not paid the outstanding rent between January 16 to March 21, 2023, for this tenancy. I find that the Landlord has proven their entitlement to a monetary **award** in the amount of **\$6,141.92** in outstanding rent, consisting of \$2,800.00 in rent due January 16, 2023, \$2,800.00 in rent due February 16, 2023, and \$541.92 in six days of rent due between March 16 to March 21, 2023, at the per diem rate of \$90.32. I grant the Landlord permission to retain the security and pet damage deposits they are holding for this tenancy in partial satisfaction of this award.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for their application.

I grant the Landlord a monetary order in the amount of \$3,441.92; consisting of \$6,141.92 in unpaid rent, \$100.00 for the recovery of the filing fee, less the security deposit of \$1,400.00 and the pet damage deposit of \$1,400.00 that the Landlord is holding for this tenancy.

Conclusion

I grant the Landlord a **Monetary Order** in the amount of **\$3,441.92**. 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, this Order 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 Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 5, 2023

Residential Tenancy Branch