



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, RR, FFT

Introduction

The tenant applied on January 12, 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”);
- (ii) an order to reduce rent for repairs, services or facilities agreed upon but not provided under section 65 of the Act; and
- (iii) authorization to recover the cost of the filing fee under section 72 of the Act.

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 an order to reduce rent?
- 4. 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 October 13, 2021. Rent is \$2,650.00 due on the first day of the month. The landlord currently retains a \$1,325.00 security deposit. There is a copy of the written tenancy agreement in evidence.

The landlord served the Notice on January 6, 2023 by posting it onto the door of the rental unit. Page two of the Notice indicates that the tenant did not pay rent in the amount of \$350.00 that was due on January 1, 2023. All pages of the Notice were served and submitted into evidence.

The landlord affirmed that the tenant paid the \$350.00 rental arrears from January 2023 on April 4, 2023.

The tenant affirmed that:

- the tenant paid the \$350.00 rental arrears from January 2023 on April 4, 2023.
- the tenant had originally withheld the \$350.00 as the tenant was having issues with the landlord in relation to parking. In particular, the tenant had withheld rent because the tenant's car got towed by the landlord and the tenant had to take Ubers instead.

Analysis

Section 26 of the Act requires tenants to pay rent the day it is due unless they have a legal right to withhold rent. Section 46(1) of the Act allows landlords to end a tenancy with a *10 Day Notice to End Tenancy for Unpaid Rent* on any day rent remains unpaid following the day rent is due.

When a *10 Day Notice to End Tenancy for Unpaid Rent* is received by a tenant, that tenant must, within 5 days, pay the overdue rent. If the tenant fails to do so, the landlord will be entitled to seek an order of possession.

The landlord's evidence shows that the tenant only paid the outstanding rent from January 1, 2023 on April 4, 2023, which is far beyond the 5 days the tenant had under the Act. I do not find that the tenant had any legal right to withhold rent. 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.

The tenant's other claim relates to the tenant's ongoing possession of the rental unit. I dismiss the remaining claim because the tenancy has ended.

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 granted an order of possession.

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 03, 2023

Residential Tenancy Branch