



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR

Introduction

The tenant applied on February 7, 2023 for 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”).

Issues

1. Is the tenant entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession?

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 February 15, 2020. Rent is \$1,320.00 due on the first day of the month. The landlord currently retains a \$650.00 security deposit. There is a copy of the written tenancy agreement in evidence.

The landlord served the Notice on February 5, 2023 by delivering to the tenant in person, who was there to receive it. Page two of the Notice indicates that the tenant did not pay rent in the amount of \$5,280.00 that was due on February 1, 2023. All pages of the Notice were served and submitted into evidence.

The landlord affirmed receiving money from the tenant for the unpaid rent on the following dates, all of which came after the 5 day dispute deadline:

- March 2, 2023 – paid \$1,980.00.
- March 13, 2023 – paid \$1,980.00.
- March 14, 2023 – paid \$1,320.00.
- April 14, 2023 – paid \$1,320.00.

The landlord affirmed that the tenant is currently \$1,320.00 in arrears for April 2023.

The tenant affirmed that the above-mentioned rental payments represent the entirety of the rent the tenant has paid in 2023 thus far. The tenant affirmed that the tenant has been late with rent due to some issues in the tenant's life coming up. The tenant also affirmed that he has not paid rent for the month of April 2023.

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 after the day rent is due.

The tenant acknowledges receiving the Notice from the landlord on February 5, 2023. I've reviewed the Notice and it complies with the form and content requirements of section 52 of the Act.

The tenant does not dispute the grounds of the Notice, acknowledging the tenant did not pay rent until at least March 2, 2023, 25 days after receiving the Notice.

To cancel the Notice the tenant had to pay the overdue rent within 5 days of receiving the Notice. Since the tenant did not do this, the tenant's claim to cancel the Notice is dismissed and the tenancy has ended. Under section 55(1) of the Act, the landlord is granted an order of possession which is attached to this decision and must be served on the tenant.

The tenant acknowledges the tenant owes \$1,320.00 in unpaid rent. Therefore, the tenant is ordered to pay \$1,320.00 in unpaid rent to the landlord.

Pursuant to sections 38 and 72 of the Act, the landlord is ordered to retain the \$650.00 security deposit as partial satisfaction of the payment order. A monetary order for the

remaining amount of \$670.00 is attached to this Decision and must be served on the tenant.

Conclusion

The landlord is awarded an order of possession and a monetary order for unpaid rent in the amount of \$670.00.

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 01, 2023

Residential Tenancy Branch