



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, MNDCT, RR, PSF, RPP, AS, OLC, FFT

OPU-DR, MNU-DR, FFL

Introduction

On February 13, 2023, the tenant applied 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) compensation for monetary loss or other money owed under section 67 of the Act;
- (iii) an order to reduce rent for repairs, services or facilities agreed upon but not provided under section 65 of the Act;
- (iv) an order for the landlord to provide services or facilities required by the tenancy agreement or law under section 27 of the Act;
- (v) an order for the landlord to return the tenant’s personal property under section 65 of the Act;
- (vi) an order to be allowed to assign or sublet the rental unit under section 65 of the Act;
- (vii) an order for the landlord to comply with the Act under section 62 of the Act; and
- (viii) authorization to recover the cost of the filing fee under section 72 of the Act.

By way of cross-application, on March 2, 2023, the landlord applied for:

- (i) an order of possession on the Notice under section 55(2)(b) of the Act;
- (ii) a monetary order for unpaid rent under section 26(1) of the Act; and
- (iii) authorization to recover the cost of the filing fee under section 72 of the Act.

Preliminary Issue - Unrelated Claims

Rules of Procedure 2.3 states that claims made in an application for dispute resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims.

It is my determination that the landlord's and tenant's claim regarding the Notice, monetary order for unpaid rent, and the recovery of the filing fee is not sufficiently related to the tenant's other claims to warrant that they be heard together. I exercise my discretion to dismiss the tenant's other claims with leave to reapply and will deal only with the issues relating to the Notice, monetary order for unpaid rent, and the recovery of the filing fee.

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 landlord entitled to a monetary order for unpaid rent?
4. Is the landlord or 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 May 1, 2021. Rent is \$804.00 due on the first day of the month. The landlord currently retains a \$390.00 security deposit and a \$390.00 pet damage deposit. There is a copy of the written tenancy agreement in evidence.

The landlord served the Notice on February 9, 2023 by attaching it to the door of the rental unit. Page two of the Notice indicates that the tenant did not pay rent in the amount of \$1,282.00 that was due on February 1, 2023. All pages of the Notice were served and submitted into evidence.

The landlord affirmed that:

- the tenant has not paid the rent in full since January 2023 and currently has rental arrears of \$2,665.00.
- the tenant has made partial rent payments as follows:
 - January 18, 2023 – paid \$153.00.

- February 7, 2023 – paid \$153.00.
- February 14, 2023 – paid \$48.00.
- March 7, 2023 – paid \$177.00.

The tenant affirmed that:

- the tenant made the above partial rent payments.
- the tenant attempted to pay the entire arrears on April 15, 2023, which was rejected by the landlord.
- the tenant only partially paid the rent because the rental unit is in a subsidized housing building under BC Housing. The tenant had become unemployed at the end of 2022 and decided to pay the amount stated on the minimum rent table provided by BC Housing rather than pay the full rent.
- Prior to paying this reduced amount, the tenant asked the landlord for approval. However, the landlord did not approve of allowing the tenant to pay this reduced amount.

In response to the tenant's submissions, the landlord affirmed that:

- the building, which the rental unit is located in, has never been under the management of BC Housing.
- the landlord does not have an operating agreement with BC Housing.
- the tenancy agreement between the landlord and the tenant does not make any reference to BC Housing nor does it contain any agreement to allow the tenant to reduce the rent if the tenant becomes unemployed.

Analysis

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some of the rent. Section 46(1) of the Act allows landlords to end a tenancy if the tenant does not pay rent on time by issuing a *10 Day Notice to End Tenancy for Unpaid Rent*.

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 unilaterally decided to partially pay the rent starting January 2023. While the tenant did attempt to pay the entire arrears on April 15, 2023, this is far beyond the 5 days that the tenant had under the Act.

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.

Since the application relates to a section 46 notice to end tenancy, the landlord is entitled to an order for unpaid rent under section 55(1.1) of the Act. Therefore, the tenant is ordered to pay \$2,665.00 in unpaid rent to the landlord.

Since the landlord is successful in its application, the landlord's application to recover the cost of the filing fee under section 72 of the Act is granted. The tenant's application to recover the cost of the filing fee is dismissed.

Pursuant to sections 38 and 72 of the Act, the landlord is ordered to retain the \$390.00 security deposit and \$390.00 pet damage deposit as partial satisfaction of the payment order. A monetary order for the remaining amount of \$1,985.00 is attached to this Decision and must be served on the tenant.

Conclusion

The tenant's application is dismissed without leave to reapply.

The landlord's application is granted. The landlord is awarded an order of possession and a monetary order in the amount of \$1,985.00.

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