



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, OLC

Introduction

The tenant applied on February 10, 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”); and (ii) an order for the landlord to comply with the Act under section 62 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 for the landlord to comply with the Act?

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 March 1, 2022. Rent is \$2,850.00 due on the first day of the month. The landlord currently retains a \$1,425.00 security deposit. There is a copy of the written tenancy agreement in evidence.

The landlord served the Notice on February 6, 2023 via SMS message, which the tenant acknowledged receipt of. All pages of the Notice were served and submitted into evidence.

The landlord affirmed that the tenant only partially paid the rent in January 2023 (the tenant had paid \$1,350.00 as partial payment for rent) and has not paid any rent since then. The landlord further affirmed that tenant currently has rental arrears of \$10,050.00.

The tenant affirmed that the tenant had paid \$1,350.00 as partial payment for rent in January but has not paid any rent since then. The tenant affirmed that the tenant has not paid any rent because the tenant is going through a difficult time in life and does not have the resources to pay.

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*.

The landlord's evidence shows that the tenant partially paid the rent in January 2023 and has not paid any rent since then. 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 \$10,050.00 in unpaid rent to the landlord.

Pursuant to sections 38 and 72 of the Act, the landlord is ordered to retain the \$1,425.00 security deposit as partial satisfaction of the payment order. A monetary order for the remaining amount of \$8,625.00 is attached to this Decision and must be served on the tenant.

As the tenancy is ending because of the above findings, I dismiss the tenant's remaining claim without leave to reapply.

Conclusion

The application is dismissed without leave to reapply. The landlord is awarded an order of possession and a monetary order in the amount of \$8,625.00.

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