



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR-MT, CNC-MT, OLC

OPR-DR, MNR-DR, FFL

Introduction

The tenant applied on February 23, 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) more time to dispute the Notice under section 66 of the Act;
- (iii) an order cancelling a One Month Notice to End Tenancy for Cause under section 47 of the Act;
- (iv) more time to dispute the One Month Notice to End Tenancy for Cause under section 66 of the Act; and
- (v) an order for the landlord to comply with the Act under section 62 of the Act.

By way of cross-application, the landlord applied on April 5, 2023 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 55(1.1) 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 tenant’s and landlord’s claims regarding the Notice 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 Notice and issues relating to the Notice.

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 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 June 14, 2021. Rent is \$2,600.00 due on the first day of the month. The landlord currently retains a \$1,300.00 security deposit. There is a copy of the written tenancy agreement in evidence.

The landlord served the Notice on February 2, 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 \$7,000.00 that was due on February 1, 2023. All pages of the Notice were served and submitted into evidence.

The landlord affirmed that the tenant is currently \$12,800.00 in rental arrears.

The tenant affirmed that:

- the tenant is currently \$12,800.00 in rental arrears.
- the tenant applied for more time to dispute the Notice as the tenant was having health issues. However, the tenant was not hospitalized during this period.

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.

A tenant who receives a *10 Day Notice to End Tenancy for Unpaid Rent* has five days after the receipt to either pay rent in full or dispute the notice. When a tenant fails to do either, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice.

Section 66 of the Act and Policy Guideline 36 (*Extending a Time Period*) states that an arbitrator may not extend the time limit to apply to dispute a notice to end tenancy if that application was filed after the effective date of such notice.

The landlord's evidence is that the landlord served the Notice on February 2, 2023 by posting it onto the door of the rental unit, which means the tenant is deemed to have received the Notice on February 5, 2023. Therefore, the effective date of the Notice is February 15, 2023. As the tenant filed this application on February 23, 2023, which is 8 days beyond the effective date of the Notice, the tenant is not entitled to more time to dispute the Notice. As there is also no evidence that the tenant paid the rent in full within the five days required, I find that the tenant is conclusively presumed to have accepted the end of the tenancy.

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 \$12,800.00 in unpaid rent to the landlord.

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

Pursuant to sections 38 and 72 of the Act, the landlord is ordered to retain the \$1,300.00 security deposit as partial satisfaction of the payment order. A monetary

order for the remaining amount of \$11,600.00 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 \$11,600.00.

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 05, 2023

Residential Tenancy Branch