



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

Tenant: CNR, FFT
Landlord: OPR-DR, FFL

Introduction

The Tenants (hereinafter the “Tenant”) filed an Application for Dispute Resolution on February 2, 2023 seeking a cancellation of the 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10-Day Notice”), and reimbursement of the Application filing fee.

On February 23, 2023 the Landlord applied for an order of possession of the rental unit and reimbursement of their Application filing fee. The Landlord initially filed this as a Direct Request; however, this application cannot be considered by that method when there is a prior extant request from the Tenant in place.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on May 29, 2023. At the start of the hearing, both parties confirmed they received the prepared evidence of the other.

Issues to be Decided

Is the Tenant entitled to cancellation of the 10-Day Notice?

Should the Tenant not be successful in this Application, is the Landlord entitled to an Order of Possession pursuant to s. 55 of the *Act*?

Is the Landlord entitled to monetary compensation for unpaid rent pursuant to s. 67 of the *Act*?

Is the Landlord eligible for compensation for compensation for monetary loss or other money owed, pursuant to s. 67 of the *Act*?

Is the Landlord entitled to recover the filing fee for their Application, pursuant to s. 72 of the *Act*?

Background and Evidence

Both parties provided a copy of the tenancy agreement in their evidence. The basic terms were known to the parties. The parties signed the agreement on September 15, 2021 for the tenancy that started on that same date. The rent amount was set at \$2,500 per month, payable on the first day of each month. The Tenant paid a security deposit amount of \$1,250 at the start of the tenancy; that deposit was still being held by the Landlord as of the date of this hearing.

The Landlord served the 10-Day Notice to the Tenant on January 24, 2023. This set the final end-of-tenancy date for February 15, 2023. The Tenant applied to challenge this 10-Day Notice on February 2, 2023.

The Tenant stated in the hearing that they moved out from the rental unit on March 25, 2023. This was new information to the Landlord in the hearing. The Tenant at the time of the hearing had not returned the key to the Landlord.

The Tenant confirmed they would return the key to the Landlord. The parties in the hearing agreed this would happen on the same day of the hearing.

Analysis

I find the matter of an end to this tenancy is settled. I find this was the result of the Tenant's own initiative to move out from the rental unit. I dismiss the Tenant's Application in its entirety.

Under s. 55 of the *Act*, when the Tenant's Application to cancel a notice to end tenancy is dismissed, and I am satisfied the document complies with the requirements of s. 52 regarding form and content, I must grant a landlord an order of possession.

On my review, I find the 10-Day Notice complies with the requirements of form and content; therefore, the Landlord here is entitled to an Order of Possession. In the hearing, I stressed the importance to the parties of meeting to review the condition of the rental unit together, and completion of the Condition Inspection Report. Additionally, the Tenant must provide a forwarding address to the Landlord in writing, and return the key.

Regarding rent amounts, I find the record clear to establish that the rent amount as of January 1, 2023 was \$1,590 per month, payable on the 1st of each month as per the original agreement. The parties agreed to this in the hearing.

The *Act* s. 26 requires a tenant to pay rent when it is due under the tenancy agreement whether or not a landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent. The wording appears thus:

- (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations of the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.

I conclude the Tenant did not pay the full rent amount as required. The *Act* s. 26 applies and the Tenant had no authority to withhold rent because of other amounts owed to them by the Landlord. I find the Tenant breached s. 26 of the *Act*.

The *Act* s. 55(1.1) specifies that I must grant repayment of unpaid rent. This amount is \$7,590. The Tenant did not notify the Landlord of their move out. This precluded and prevented the Landlord from acquiring new tenants in the rental unit or making other plans. I find the scheduling of a hearing to decide the matter does not relieve the Tenant of the responsibility for either paying rent, as per s. 26, or notifying the Landlord of their move out from the rental unit, which at common law breaches the Landlord's rights.

The *Act* s. 72(2) gives an arbitrator the authority to make a deduction from a deposit held by the landlord. The Landlord here has established a claim of \$7,590. After setting off the \$750 security deposit, and the \$750 pet damage deposit, there is a balance of \$6,450. I am authorizing the Landlord to keep the deposit amounts and award the balance of \$6,450 as compensation for the rent amounts owing.

The Tenant was not successful on their Application; therefore, I grant no reimbursement of the Application filing fee to them. Conversely, the Landlord was successful; therefore, I grant the filing fee amount to them.

Conclusion

I grant an Order of Possession to the landlord effective immediately, as per the parties' discussion in the hearing.

Pursuant to s. 55(1.1) and s. 72 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$6,550. I provide the Landlord with this Monetary Order in the above terms they must serve it to the Tenant as soon as possible. Should the Tenant fail to comply with this Monetary Order, the Landlord may file it in the Small Claims Division of the Provincial Court where it will be enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: May 29, 2023

Residential Tenancy Branch