



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants filed under the Residential Tenancy Act (the “Act”), to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”), issued on March 9, 2023, to suspend or set conditions on the landlord’s right to enter and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to relevant facts and issues in this decision.

At the outset of the hearing the parties agreed to end the tenancy on the following conditions:

- 1) The parties agreed that the tenancy will end on **May 6, 2023, at 7:00pm**; and
- 2) The parties agreed that they landlord or the landlord’s agent will attend the rental unit on May 6, 2023, at 7:00pm to complete the moveout condition inspection.

This settlement agreement was reached in accordance with section 63 of the *Residential Tenancy Act*.

Should the tenants fail to comply with the above, settlement agreement, I find it appropriate to grant the landlord and order of possession effective May 6, 2023, at 7:00pm, pursuant to section 55 of the Act. This order may be filed in the Supreme Court and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Although the tenancy is ending, I still must consider the provisions of section 55(1.1) of the Act to determine if an order requiring the payment of unpaid rent should be granted.

Issue to be Decided

Is the landlord entitled to a monetary order for unpaid rent pursuant to section 55(1.1) of the Act?

Background and Evidence

The tenancy began on September 1, 2022. Rent in the amount of \$1,450.00 was payable on the first of each month. A security deposit of \$725.00 was paid by the tenants.

The tenants acknowledged that they received the Notice on March 10, 2023, which indicated that they had failed to pay rent in the amount of \$1,950.00. Which is comprised of \$500.00 for December 2022 and \$1,450.00 for March 2023 rent.

The tenants testified that they paid the landlord in cash on February 22, 2023, at approximately 6:00pm in advance for March 2023, rent. The tenants stated that the landlord did not issue them a receipt.

The tenants confirmed that they did not pay rent for December 2022 in the amount of \$500.00 and have not paid any rent for April and May 2023. The tenants stated that in February 2023 they were down to one income.

The landlord's agent testified that the landlord never received any cash from the tenants and the landlord always issues a receipt. The agent stated that the tenants sent them a screenshot showing \$2,700.00 was taken from an account on February 22, 2023; however, this does not prove it was used to pay the rent or that this was even their account.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Under the legislation the tenant may dispute the Notice for specific reasons, such as they have proof that their rent was paid. However, as the tenants admitted they did not pay the rent owed for December 2022 in the amount of \$500.00 and this amount was noted in the Notice. I find the Notice is valid and remains in full force and effect.

As the parties have agreed that the tenancy is ending, and I have already granted an order of possession. The only issue for me to determine is the rent owed pursuant to section 55(1.1) of the Act.

The tenants admit that they did not pay \$500.00 for December 2022, rent or any rent for April and May 2023. I find the tenant's breached section 26 of the Act as rent is due on the first day of each month. Therefore, I find the landlord is entitled to recover unpaid rent for the above months in the amount of **\$3,400.00**.

Both parties have given a different version of events regarding March 2023, rent. Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus.

The evidence of the tenants was that they gave the landlord cash on February 22, 2023, and the landlord failed to give them a receipt. The landlord denies ever receiving cash from the tenants on February 22, 2023, and that they do provide receipts to the tenants.

In this case, I accept the landlord's testimony over the tenants. The landlords have provided in evidence a history of rent payments and copies of receipts. The history show that for most of the tenancy the tenants did not pay the rent in full or on time. The history show that the tenants paid rent for January and February 2023 on the 1st day of the month, and receipts were issued which also showed the outstanding rent owing for December 2022. Never during the tenancy did the tenants' pay rent in advance.

Further, the tenants did not submit any documentary evidence, at the very least I would expect to see several months of banks statements for my review and consideration. A withdrawal of money does not prove it was actually given to the landlord.

Further, the tenants admit that they were down to one income in February 2023, leading me to believe that rent was not paid, because the tenants continued to fail to pay any rent for April and May 2023. I find the tenants breached the Act, when they failed to pay

all rent for March 2023. Therefore, I find the landlord is entitled to recover unpaid rent for March 2023, in the amount of **\$1,450.00**.

I find that the landlord has established a total monetary claim of **\$4,850.00** comprised of the above-described amount. I order that the landlord retain the security deposit of **\$750.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$4,100.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The tenant's application is dismissed. The landlord is granted an order of possession. The landlord is authorized to keep the security deposit in partial satisfaction of unpaid rent as is granted a monetary order for the balance due of unpaid rent.

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