



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, DRI, OLC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant 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 22, 2023, and a second 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “2nd Notice”) issued on April 5, 2023, and to dispute a rent increase, and to have the landlord comply with the Act.

Both parties appeared, gave 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.

I have amended the tenant’s application to include the correct landlord’s name as shown in the Notice, and have removed the name of the landlord’s agent, I find this is not prejudicial to either party.

Issue to be Decided

Should the Notice be cancelled?

Background and Evidence

The tenant testified that they received the Notice on March 22, 2023. Filed in evidence is a copy of the Notice that complies with section 52 of the Act.

The tenant testified that they received the 2nd Notice on April 5, 2023. Filed in evidence is a copy of the 2 Notice that complies with section 52 of the Act.

The tenant testified that when they moved into the rental unit on October 31, 2022, it was also for employment purposes. The tenant stated that the landlord told that their rent would be subsidized by \$500.00 per month; however, they were never informed of how much the rent would be and they were not required to pay a security deposit.

The tenant stated that they never entered into a written tenancy agreement or an employment contract, nor did they shake hands on the deal. The tenant stated that a verbal agreement is not fully binding.

The tenant testified that they never directly paid rent to the landlord as it was taken out of their paycheck. The tenant stated that their employment ended at the end of January 2023, and they have not paid any rent to the landlord.

The landlord testified that when the tenant was offered employment the market rent of \$1,700.00 was established and the tenant was to receive a subsidy of \$500.00 and the rent payable by the tenant was \$1,200.00 while employed.

The landlord testified that the subsidy rent of \$1,200.00 was taken off the tenant's paycheck at their request. The landlord stated that since the tenant's employment ended at the end of January 2023, the tenant is no longer entitled to receive the subsidy. The landlord stated that the tenant has not paid any rent for February, March, April and May 2023.

Analysis

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

The Act defines "**tenancy agreement**" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

In this case, the parties entered into a verbal employment contract for the tenant to act as a building manager. As part of the employment contract rent was to be reduced by \$500.00. I do not accept the tenant's evidence that they never established the market

rent. This would not be logical when employment was discussed along with the rent subsidy as the most basic term of any tenancy agreement is the monthly rent to which the tenant is responsible to pay. Therefore, I find the rent was \$1,700.00, which was reduced by \$500.00 for the duration of the employment contract which ended January 31, 2023.

Loosing a rent subsidy after their employment has ended is not a rent increase. The tenant had to of known when they were no longer employed that they would not be entitled to a rent subsidy that related to that employment.

In this case, I must grant the tenants application to cancel the first Notice which relates to February 2023 rent as by the landlord's own evidence shows that this was deducted from the tenant's paycheque in an email dated February 19, 2023.

The 2nd Notice states that rent in the amount of \$4,345.10 was owing on April 1, 2023. This was \$1,700.00 for March and \$1,700.00 for April 2023, rent; however, it also included the amount of \$145.10 for overpayment of wages and \$800.00 for alleged theft of petty cash. The last two items cannot be recovered as part of unpaid rent. This is an employee and employer issue which is outside of my jurisdiction.

However, I am satisfied that the tenant did not pay any rent for March and April 2023, in the amount of \$3,400.00 and has failed to pay rent for May 2023. I find that the 2nd Notice is valid and remains in full force and effect. I find the tenancy legally ended on April 18, 2023, and the tenant is overholding the rental unit. Therefore, I dismiss the tenant's application to cancel the 2 Notice.

As the tenant's application is dismissed relating to the 2nd Notice, I find the landlord is entitled to an order of possession, pursuant to section 55 of the Act.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant. 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.

I find that the landlord is entitled to monetary order for the unpaid rent for March, April and May 2023, in the amount of **\$5,100.00**. I grant the landlord an order pursuant to section 55(1.1) and 67 of the Act. 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 and a monetary order for 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 10, 2023

Residential Tenancy Branch