



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR-MT, RR, OLC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the *Residential Tenancy Act* (the “Act”) to be allowed more time to dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) issued on March 17, 2023, to reduce rent for repairs and to have the landlord comply with the Act.

This matter was set for hearing by telephone conference call at 1:00 P.M on this date. The line remained open while the phone system was monitored for thirty minutes and the only participant who called into the hearing during this time was the landlord. Therefore, as the tenant did not attend the hearing by 1:30 P.M, even after they received a notification from the Residential Tenancy Branch on May 1, 2023, reminding them of today’s hearing. The hearing proceeded in the absence of the tenant.

The landlord gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form and make submissions at the hearing.

The landlord testified that they served the tenant with their evidence when they served the Notice, and again it was sent by registered mail on April 22, 2023. The landlord provided the tracking number as evidence, which I have noted on the covering page of this decision. I find the tenant was deemed served to have received the landlord’s evidence five days after it was mailed, April 27, 2023.

The landlord stated that they also sent additional copies by email to the tenant.

Issue(s) to be Decided

Should the tenant be given more time to dispute the Notice?

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary or unpaid rent?

Background and Evidence

The tenancy began on June 1, 2019. Rent in the amount of \$900.00 was payable on the first of each month. A security deposit of \$450.00 was paid by the tenant.

The tenant submits in their application that they received the Notice on March 20, 2023, which was sent by registered mail on March 17, 2023. This would automatically correct the effective date of the Notice to March 30, 2023, pursuant to section 53(2) of the Act.

The tenant submitted their application on February 28, 2023, and the fee waiver documents were submitted and approved on March 31, 2023.

The landlord testified that the tenant was in rent arrears in the amount of \$16,735.00, when they served the Notice on the tenant, which was comprised of the following amounts:

2019 arrears owing \$2005.00
2020 arrears owing \$5,700.00
2021 arrears owing \$ 850.00
2022 arrears owing \$5,550.00

The landlord testified that the tenant has paid no rent since they issued the Notice increasing the rent owed. Filed in evidence is a history of interact etransfers and a rent ledger.

The landlord was questioned why the rent ledger had increased the rent to \$1,700.00 for a portion of time and to \$1,850.00 from November 1, 2022. The landlord testified that was because the tenant took over the basement unit within the premises.

The landlord was questioned why the rent ledger is missing months in the ledger. The landlord testified it was an error on their part as those months were omitted by accident and rent was not paid. I informed the landlord that I was not adding additional months in the rent ledger that they omitted in the Notice.

Analysis

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

The Residential Tenancy Branch Rules of Procedure 2.6 set out when an application is considered to have been made. I find the tenant's application was considered made on March 31, 2023, when all documents for the fee waiver were submitted.

As I have found the tenant's application was made on March 31, 2023, I find this date is beyond the corrected effective date of the Notice, which was March 30, 2023. Under section 66(3) of the Act, I must not grant the tenant more time to dispute the Notice. I find the tenancy legally ended on March 30, 2023, the corrected effective date of the Notice. Therefore, I dismiss the tenant's application to dispute the Notice.

As I have dismissed the tenant's application, I find I must consider the provisions of 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 accept the undisputed testimony of the landlord that as of March 17, 2023, the date the Notice was issued, the tenant had failed to pay rent arrears totalling the amount of \$16,735.00. This is supported by the landlord's rent ledger. Further, the tenant did not attend the hearing to dispute the amount owed. The amount is clearly written within the Notice. I find the tenant breached the Act when they failed to pay the rent.

Further, I find the tenant failed to pay subsequent rent for April and May 2023, increasing the total arrears to **\$20,435.00**. I find that the landlord is entitled to a monetary order for the unpaid rent, pursuant to section 55(1.1) of the Act in the amount of **\$20,435.00**.

I order that the landlord retain the security deposit of **\$450.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$19,985.00**. This order may be filed in the Provincial Court and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

I did not consider the unpaid utilities listed in the Notice because it indicates that the written demand was given on March 17, 2023. I find I cannot treat the unpaid utility charges as unpaid rent as the written demand in the Notice does not meet the requirements of at least 30 days after written demand of payment is given. The landlord is entitled to make their own application to recover utility charges.

Conclusion

The tenant's application to be allowed more time to dispute the Notice is dismissed. The tenancy legally ended on March 30, 2023. The landlord is granted an order of possession and a monetary order in the above terms.

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 04, 2023

Residential Tenancy Branch