



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 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 April 1, 2023, for compensation for monetary loss or other money owed, to have the landlord make repairs to the unit, to suspend or set condition on the landlord’s right to enter, to have the landlord comply with the Act and to recover the cost of the filing fee.

Both parties appeared and gave testimony.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant’s request to set aside the Notice, and the requirements of section 55 of the Act.

Although I have the discretion to dismiss the tenant’s application without leave. I find that would be unfair to the tenant as the merits of their monetary claim were not heard. Therefore, the balance of the tenant’s application is dismissed, **with leave to reapply**.

Further, section 59 of the Act requires that the full particulars of the dispute to be in the application. I find the tenant’s monetary claim is vague and does not provide sufficient details as required. The tenant writes in the details the following.

1. Rent abatement for unfit premises - \$13,462.00
2. Damages for unfit premises - \$9,000.

However, in point 1. there are no details, such as dates, times or how the premises was unfit, simply stating unfit is not sufficient details, nor is there any calculation as to how they arrived at the amount claimed, such an example would be \$100.00 per month from May 2022 to May 2023, total amount \$1,300.00. Point 2. there is no particulars to what damages or any calculation as to how they arrived at this amount, and this simply could be the same as point 1 and overlapping a claim.

Furthermore, the tenant's evidence was not served on the landlord at least 14 days before the hearing and would be excluded. The tenant sent the landlord their evidence on May 8, 2023, by Canada Post, which was the last day it was to be received by the landlord. The tenant did not consider the service provisions of the Act as it is not deemed received until 5 days later. Although I accept the landlord received the evidence on May 9, 2023; however, that is only 13 days before the hearing.

I have reviewed all evidence that is related to the Notice and section 55 of the Act, I refer only to relevant facts and issues in this decision. The parties were informed the only consideration given would be if the tenant had the authority under the Act to withhold rent at the time the Notice was issued, no other defences will be considered as the Act is very clear on this issue.

Issue to be Decided

Should the Notice be cancelled?
Is the landlord entitled to an order of possession?
Is the landlord entitled to a monetary order for the unpaid rent?

Background and Evidence

The tenancy began on October 16, 2015. Rent in the amount of \$1,045.00 was payable on the first of each month. A security deposit of \$450.00 was paid by the tenant. The parties agreed that the tenant vacated the premises on or about April 10, 2023, and the move-out condition inspection report was completed on April 13, 2023.

The tenant acknowledged that when they received the Notice on April 1, 2023, they had not paid rent for March 2023 and did not pay any rent for April 2023, because they believe the landlord has breached the Act for failure to make repairs and that the rental unit was uninhabitable.

The tenant's stepfather submits that the tenants defence was that the landlord owes the tenant thousands of dollars as the rental unit was uninhabitable due to breaching the Act and this should be offset with the rent.

The landlord testified that the rent for March and April 2023 were not paid, and the rental unit was not unfit to live in.

Analysis

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

Section 26 (1) of the Act states a tenant must pay rent when it is due under the tenancy agreement, **whether or not the landlord complies with this Act, the regulations or the tenancy agreement**, unless the tenant has a right under this Act to deduct all or a portion of the rent. Section 46(1) of the Act allows landlords to end a tenancy if the tenant does not pay rent on time by issuing a *10 Day Notice to End Tenancy for Unpaid Rent*.

Upon review of the Notice, I find the Notice is completed in accordance with the requirements of section 52 of the Act.

Under the legislation the tenant may dispute the Notice for specific reasons, such as they have proof that their rent was paid or that the tenant had the right under the Act to deduct all or a portion from their rent as follows:

1. To recover an illegal rent increase, pursuant to section 43(5) of the Act;
2. For a security deposit or pet damage deposit that is over the allowable amount, pursuant to section 19 of the Act;
3. For the cost occurred to complete an emergency repair, pursuant to section 33 of the Act; or
4. They have an order from an Arbitrator allowing a deduction or with written permission of the landlord.

Although the tenant filed an application for dispute resolution within the time limit permitted under the Act, I find the tenant's application had no merit as the tenant admitted rent was not paid within 5 days after receiving the Notice because they believed the landlord has breached the Act.

While I accept the tenant may feel entitled to withhold rent and they feel they have a defence; however, the only defence under the Act to withhold rent is for the above reasons, any other reasons or defence they must have an order from an Arbitrator authorizing a deduction from the rent **before they decide to withhold rent.**

Therefore, I dismiss this portion of the tenant's application without leave to reapply.

As the tenant was not successful with their application to cancel the Notice, I find the tenant is not entitled to recover the filing fee from the landlord.

As the tenant's application is dismissed, I must consider the provisions of section 55 of the Act.

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [*landlord's notice: non-payment of rent*], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

Although the landlord would be entitled to an order of possession; however, the parties agreed that the tenant has vacated the rental unit. Therefore, I find the landlord does not require an order of possession.

As the tenant admitted they did not pay rent for March and April 2023, I find the tenant owes the landlord **\$2,090.00**. I find it appropriate to offset the amount owed with the tenant's security deposit of \$450.00 and interest of \$2.48. I grant the landlord a monetary order for the balance due **\$1,637.52**. 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.

Should the tenant reapply for monetary compensation and be successful, it is the sole discretion of the Provincial Court if they decide to offset the amount owed, if the landlord has filed for enforcement. Otherwise, this could be simply agreed upon by the parties in writing.

Conclusion

The tenant's application is dismissed. The landlord does not require an order of possession. The landlord is granted a monetary order as set out above.

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 23, 2023

Residential Tenancy Branch