



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, DRI, FFT

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 3, 2023, to dispute a rent increase and to recover the cost of the filing fee.

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.

As the tenant was not served with the landlord’s documentary evidence until the morning of the hearing. I have excluded the landlord’s evidence.

At the outset of the hearing the tenant stated that they would like this matter to be adjourned because they are waiting to receive information on a freedom of information request they made to the branch, regarding any decision made relating to the premises. The tenant stated that they have never had a previous hearing with the landlord.

In this case, I find an adjournment would not be appropriate simply because the tenant is on a fishing expedite to find prior decision on the landlord. This hearing is not about prior hearings and unrelated tenancy, and prior decision may not even exist. Nor would they be relevant to the issue of unpaid rent.

This hearing is simply to determine whether or not the tenant paid rent. I find it highly prejudicial to the landlord to adjourn a matter when the tenant has stated they have not paid rent any rent since the Notice was issued.

Further, I am not prepared to consider the tenant claim regarding an illegal rent increase, that was for a different rental unit where the tenant no longer resides. I am only prepared to deal with the issues relating to this specific 2-bedroom rental unit. If

the tenant feels they are entitled to a monetary order for an illegal rent increase relating to that specific rental unit. The tenant can reapply for dispute resolution.

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.

Issue to be Decided

Should the Notice be cancelled?

Background and Evidence

The tenant testified that they moved into the premises on December 1, 2022, and rented a one-bedroom unit and rent was \$1,100.00.

The tenant testified that they moved from that premises on March 1, 2023, in to a 2-bedroom rental unit with their partner and rent was \$1,700.00. The tenant stated that the rent was to be shared equally.

The tenant testified that their partner moved out of the premises, on March 29, 2023, and they are only responsible for half the rent. The tenant stated that they wanted to go back into the one-bedroom unit they originally rent. The tenant admits they did not pay any rent for April or May 2023.

The landlord testified that the tenant and their co-tenant moved into the 2-bedroom unit on March 1, 2023, and the rent of \$1,700.00 was paid. The landlord stated that the co-tenant vacated the premises and the tenant wanted to go back to the original one-bedroom unit; however, this could not be accommodated as they had already had a new tenant moving. The landlord stated that the tenant did not pay the outstanding rent for April and has not paid rent for May 2023.

The landlord testified that the tenant did send an etransfer of \$1,100.00 on March 25, 2023; however, that was returned to the tenant because they were told that they would be moving out. The landlords seek an order of possession and a monetary order for unpaid rent.

Analysis

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

In this case, tenant and their co-tenant moved into a 2-bedroom rental unit on March 1, 2023, and rent was established at \$1,700.00 and paid by the co-tenant. This not a tenancy in common simply because the tenant's shared the rent. This is not a situation where the landlord is renting out individual rooms under separate agreements and can simply rent out the room. The tenant has exclusive possession. I find this was a joint tenancy and the tenant is jointly and separately responsible to pay the rent whether or not the co-tenant vacates.

While I accept the tenant may have wanted to go back to the one-bedroom unit; however, that rental unit was already committed to another occupant. The landlord was under no obligation to re-rent that other unit to the tenant as that tenancy ended when they vacated. Further, the tenant is still residing in the 2-bedroom unit and that tenancy has not ended.

The tenant acknowledged that they received the Notice on April 3, 2023, by posting to the door. Even if I accept tenant's testimony that they are only responsible for half the rent, which I do not accept, the tenant has admitted that they did not pay any rent to the landlord for April and May 2023. I find the tenant breached section 26 of the Act. I find the Notice is valid and remains in full force an effect. I find the tenancy legally ended on April 13, 2023.

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.

As the tenant has failed to pay rent in the amount of \$1,700.00 for April and May 2023, I find the landlord has established the tenant owes **\$3,400.00**, pursuant to section 55(1.1) of the Act. The landlord is granted a monetary order for the unpaid rent as set out above. 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.

Conclusion

The tenant's application is dismissed. The landlord is granted an order of possession and a monetary order for the 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 11, 2023

Residential Tenancy Branch