



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **CNR, RR, RP, 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 6, 2023.

Only the landlord appear. The landlord stated that they were told by the tenant that they would be vacating the premises on May 31, 2023

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 ten minutes and the only participant who called into the hearing during this time was the Respondent. Therefore, as the Applicants did not attend the hearing by 1:10 P.M, and the Respondent appeared and was ready to proceed, I dismiss the tenants’ application without leave to reapply.

However, as the tenants disputed the Notice, I must consider section 55 of the Act.

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

Is the landlord entitled to an order of possession?
Is the landlord entitled to a monetary for the unpaid rent

Background and Evidence

The tenancy began on July 1, 2022. Rent in the amount of \$3,000.00 was payable on the first of each month. A security deposit of \$1,500.00 and a pet damage deposit \$1,500.00 (the “Deposits”) were paid by the tenant.

The tenants confirmed in their application that they received the Notice on April 6, 2023. The Notice shows that the tenants had failed to pay rent of \$3,000.00 and utilities in the amount of \$85.83.

The landlord confirmed that the tenants did pay the outstanding rent within 5 days; however, they did not pay the outstanding utilities of \$85.83. The landlord stated that the tenants only paid \$1,500.00 rent for May and the tenants owes \$1,500.00.

The landlord indicated that they are satisfied that the order of possession will be effective May 31, 2023.

Analysis

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

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some 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:

I accept the landlord's undisputed testimony that although the tenant did pay the outstanding rent for April 2023 within the 5 days; however, they did not pay the outstanding utilities. I find the tenant breached the Act, when they failed to pay the utilities listed in the Notice. Therefore, I find the Notice is valid and remains in full force and effect.

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.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective at **1:00 pm on May 31, 2023**. A copy must be served upon the tenants. This order may be filed in the Supreme Court and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenant..

I find the tenants owes the landlord \$85.83 for unpaid utilities listed in the Notice and \$1,500.00 is owed for May 2023, rent. I find the tenants owes the landlord **\$1,585.83**.

I Order the landlord to keep the above amount from the Deposits in full satisfaction of the above award.

Conclusion

The tenants' application is dismissed. The landlord is granted an order of possession. The landlord is entitled to keep a portion of the Deposits in full satisfaction of the rent owed.

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 26, 2023

Residential Tenancy Branch