



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, OLC, OPR, MNR-S, FF

Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application is seeking orders as follows:

1. For an order of possession;
2. For a monetary order for unpaid rent;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") issued on April 5, 2023; and
2. To have the landlord comply with the Act.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, y, and make submissions at the hearing.

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.

Preliminary issues

In the tenant's application they indicated BS and AL are tenant's; however, they are not tenants under the tenancy agreement and have no legal rights or obligations under the Act.

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 unpaid rent?

Is the landlord entitled to keep the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy began on November 1, 2022. Rent in the amount of \$2,800.00 was payable on the first of each month. A security deposit of \$1,400.00 was paid by the tenant

The tenant acknowledged that they received the Notice on April 5, 2023. The tenant testified that they paid the landlord April 2023, rent in cash on March 31, 202 at approximately 7pm.

The landlord testified that the tenant did not pay them cash on March 31, 2023, as they had left home at approximately 6:10 pm to attend a family birthday party. The landlord stated they had made many calls to the tenant; however, they went unanswered.

The tenant testified that they did receive a call from the landlord between 4:30 and 5:00pm; however, they were already in the car driving to the landlord's house to pay the rent. The tenant stated that they had their roommate AL with them because they were going to introduce them to the landlord and AL witnessed that the rent was paid.

The landlord argue this is not true and the tenant never paid rent for April 2023, and has failed to pay rent for May 2023. The landlord stated that the tenant has also produced false documents, claiming their pet is a service animal.

The tenant acknowledged they did not pay rent for May 2023.

The tenant testified that they took their dog for training, and they received that certificate from the trainer.

Analysis

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

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, such as an order from an Arbitrator.

The evidence of the tenant was that they paid rent to the landlord in cash on March 31, 2023. No supporting evidence was given such as bank statements to prove they had the money and that it was withdrawn from their bank account.

In this case, I accept the landlord's evidence that they were not home at the time as they were attending a family birthday, over the tenant's evidence. I find the tenant's testimony and the supporting document of AL are inconsistent and lack credibility.

The evidence of the tenant was they did not answer the landlord's telephone call as they were driving and on their way to pay the rent at approximately 4:30pm; however, the tenant said rent was paid at approximately 7:00pm. This is over a 2-hour delay.

Further, the evidence of the tenant was that they went with their roommate AL so they could introduce AL to the landlord. If that statement was true, why would AL state in the to who it may concern document that they waited in the car. This does not have the ring of truth. AL did not attend the hearing to assess their credibility.

Furthermore, it appears the tenant may have provided a false document to the landlord, which was filed in evidence by the landlord. This a certificate the tenant's dog is a service dog which goes against the tenant's credibility. The document refers to Americans with Disabilities Act and there are spelling mistakes in the email address and the domain name used of Servicedogcertificates.com is not registered.

The evidence of the tenant when questioned was they took their dog for training, and this was the certificate it received. I find that highly unlikely as another website listed on

the certificate is www.servicedogcertificates.org this is a website that anyone one can register their pet and pay a fee to obtain a certificate.

Based on the above, I dismiss the tenant's application to cancel the Notice. I find the Notice is valid and remains in full force.

As the tenant was not successful with their application the tenant is not entitled to recover the filing fee from the landlord.

As the tenant's application is dismissed, I find the landlord is entitled to an order of possession, pursuant to 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.

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 April and May 2023, pursuant to section 55(1.1) of the Act in the amount of **\$5,600.00**.

I find that the landlord has established a total monetary claim of **\$5,700.00** comprised of the above described amount and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$1,400.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$4,300.00**. 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.

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 29, 2023

Residential Tenancy Branch