



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR
 OPR-DR, MNR-DR, FFL

Introduction

The tenant applied on April 6, 2023 for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to section 46(4)(b) of the *Residential Tenancy Act* (the “Act”).

By way of cross-application, the landlord applied on April 14, 2023 for:

- (i) an order of possession on the Notice under section 55(2)(b) of the Act;
- (ii) a monetary order for unpaid rent under section 67 of the Act; and
- (iii) authorization to recover the cost of the filing fee under section 72 of the Act.

Issues

- 1. Is the tenant entitled to an order cancelling the Notice?
- 2. If not, is the landlord entitled to an order of possession?
- 3. Is the landlord entitled to a monetary order for unpaid rent?
- 4. Is the landlord entitled to recover the cost of the filing fee?

Background and Evidence

In reaching this decision, I have considered all relevant evidence that complied with the *Rules of Procedure*. Only the necessary oral and documentary evidence that helped resolve the issues of the dispute and explain the decision is included below.

The tenancy began January 1, 2023. Rent is \$1,800.00 due on the first day of the month. The landlord currently retains a \$900.00 security deposit. There is a copy of the written tenancy agreement in evidence.

Page two of the Notice indicates that the tenant did not pay rent in the amount of \$1,800.00 that was due on March 1, 2023. All pages of the Notice were served and submitted into evidence. The tenant disputed the Notice.

The landlord affirmed that:

- the landlord served the Notice on March 30, 2023 by delivering in person to the tenant, who was there to receive it. The landlord submitted video evidence of the landlord serving the tenant with the Notice, which carried the time stamp of March 30, 2023.
- the tenant is currently \$4,400.00 in rental arrears, representing unpaid rent accumulating from March 2023 to May 2023.

The tenant affirmed that:

- the tenant is currently \$4,400.00 in rental arrears.
- the tenant did not pay rent as the tenant had run into some difficulty in the tenant's life.
- the tenant received the Notice on April 4, 2023.

Analysis

Section 26 of the Act requires tenants to pay rent the day it is due unless they have a legal right to withhold rent. Section 46(1) of the Act allows landlords to end a tenancy with a *10 Day Notice to End Tenancy for Unpaid Rent* on any day rent remains unpaid after the day rent is due.

The landlord's evidence showed that the tenant did not pay the rent on March 1, 2023. The tenant affirmed that the tenant is currently \$4,400.00 in rental arrears. Therefore, I find on a balance of probabilities that the Notice was given for a valid reason.

While the Notice did not contain an effective date, under section 68 of the Act, an arbitrator may amend a notice to end tenancy that does not comply with section 52 [form and content of notice to end tenancy] if the arbitrator is satisfied that:

- the person receiving the notice knew, or should have known, the information that was omitted from the notice, and
- in the circumstances, it is reasonable to amend the notice.

As the Notice is a *10 Day Notice to End Tenancy for Unpaid Rent*, I find that the tenant should have known that the effective date would be 10 days from when the tenant received the Notice. Based on this, it would be reasonable to amend the Notice. Therefore, I am amending the Notice to include the effective date of April 9, 2023, which is 10 days from March 30, 2023. While the tenant's evidence was that the tenant received the Notice on April 4, 2023, I afford more weight to the testimony of the landlord as the landlord had provided video evidence of the tenant being served on March 30, 2023. On the other hand, the tenant did not provide any documentary evidence to support the tenant's claim that the tenant received the Notice on April 4, 2023.

As a result, I find that the Notice complies with the form and content requirements of section 52. Thus, the tenant's application to cancel the Notice is dismissed.

Based on the above findings, the landlord is granted an order of possession under section 55(1) of the Act. A copy of the order of possession is attached to this Decision and must be served on the tenant.

Since the landlord's application relates to a section 46 notice to end tenancy, the landlord is also entitled to an order for unpaid rent under section 55(1.1) of the Act. Therefore, the tenant is ordered to pay \$4,400.00 to the landlord.

Since the landlord is successful in its application, the landlord is entitled to \$100.00 to cover the cost of the filing fee under section 72 of the Act. In total, the landlord is awarded \$4,500.00.

Under section 38(4)(b) of the Act, the landlord is ordered to retain the \$900.00 security deposit as partial satisfaction of the payment order. A monetary order for the remaining amount of \$3,600.00 is attached to this Decision and must be served on the tenant.

Conclusion

The tenant's application is dismissed without leave to reapply.

The landlord's application is granted. The landlord is granted an order of possession and a monetary order for the amount of \$3,600.00.

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 16, 2023

Residential Tenancy Branch