



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, MNDCT, RR, RP, PSF, LRE, FFT

Introduction

Under section 58 of the Residential Tenancy Act (the “Act”), this hearing dealt with the tenant’s April 3, 2023, application to the Residential Tenancy Branch for:

- (i) an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to section 46(4)(b) of the Act;
- (ii) a monetary order for damage or compensation under section 67 of the Act;
- (iii) an order to reduce rent for repairs, services or facilities agreed upon but not provided under section 65 of the Act;
- (iv) an order for repairs to be made to the unit under section 65 of the Act;
- (v) an order for the landlord to provide services or facilities required by the tenancy agreement under section 27 of the Act;
- (vi) an order to suspend or restrict the landlord’s right to enter the rental unit under section 70 of the Act; and
- (vii) authorization to recover the cost of the filing fee under section 72 of the Act.

Preliminary Issue - Unrelated Claims

Rules of Procedure 2.3 states that claims made in an application for dispute resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims.

It is my determination that the tenant’s claim regarding the Notice is not sufficiently related to the tenant’s other claims to warrant that they be heard together. I exercise my discretion to dismiss the tenant’s other claims with leave to reapply and will deal only with the Notice and the filing fee.

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 tenant 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 February 1, 2023. Rent is \$5,500.00 due on the first day of the month. The landlord currently retains a \$2,750.00 security deposit and a \$2,750.00 pet damage deposit. There is a copy of the written tenancy agreement in evidence.

The landlord served the Notice on April 2, 2023 by posting a copy to the door of the rental unit. All pages of the Notice were served and submitted into evidence.

The landlord affirmed that the tenant has failed to pay rent as follows:

Month	Rent Due	Rent Paid	Amount Owning
February 2023	\$5,500.00	\$3,500.00	\$2,000.00
March 2023	\$5,500.00	\$5,500.00	None
April 2023	\$5,500.00	\$3,000.00	\$2,500.00
May 2023	\$5,500.00	None	\$5,500.00
		Total	\$10,000.00

The tenant affirmed that:

- the tenant has unpaid rent totalling \$10,000.00.
- the tenant withheld rent in February 2023 due to an agreement with the landlord. In particular, the tenant had an agreement with the landlord for the tenant to purchase a lawnmower / blower. The landlord would reimburse the tenant for the purchase and there was no budget given to the tenant. The tenant did not have any evidence of the landlord making this promise. The tenant submitted evidence of a receipt totalling \$2,189.58.
- the tenant withheld rent in April and May 2023 because there were a lot of issues with the rental unit and the tenant had wanted the landlord to conduct repairs.
- despite the Notice not specifying the amount of unpaid rent or the date it was due, the tenant knew how much rent had been paid.

In response, the landlord affirmed that:

- while there was an agreement for the tenant to purchase a lawnmower / blower and for the landlord to reimburse the tenant, the agreement was for the tenant to seek approval from the landlord with the price before purchasing.
- the tenant bought the lawnmower / blower without seeking approval or informing the landlord of the price.

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.

In relation to the unpaid rent from February 2023:

- the tenant affirmed that there was an agreement with the landlord for the tenant to purchase a lawnmower / blower. The landlord would reimburse the tenant for the purchase and there was no budget given to the tenant. The tenant did not have any evidence of the landlord making this promise.
- the landlord affirmed that, while there was an agreement for the tenant to purchase a lawnmower / blower, the agreement was for the tenant to seek approval from the landlord with the price before purchasing. The tenant did not do so.

A useful guide regarding conflicting testimony, and frequently used in cases such as this, is found in *Faryna v. Chorny* (1952), 2 D.L.R. 354 (B.C.C.A.), which states at pages 357-358:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanor of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those circumstances.

Taking into consideration all of the evidence before me, I find the landlord's submissions to be more reasonable because the tenant did not provide any evidence of the landlord making this promise. A reasonable person would ask the landlord for written confirmation before making such a large purchase. Therefore, I find that the tenant did not have a valid reason to withhold rent in February 2023.

In relation to the unpaid rent from April and May 2023, the tenant affirmed that this was withheld because there were a lot of issues with the rental unit and the tenant had wanted the landlord to conduct repairs. As this is not a valid reason to withhold rent, I find that the tenant also did not have a valid reason to withhold rent for April and May 2023.

The landlord's evidence shows that the tenant is \$10,000.00 in rental arrears. I find that the tenant did not have a valid reason to withhold rent. Therefore, I find on a balance of probabilities that the Notice was given for a valid reason.

While the Notice did not specify the amount of unpaid rent and the day it was due, 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.

The tenant affirmed that, despite the Notice not specifying the amount of unpaid rent and the date it was due, the tenant knew how much rent had been paid. Consequently, I find that the tenant knew, or should have known, the information that was omitted from the Notice. Therefore, it will be reasonable to amend the Notice to specify that the tenant failed to pay rent in the amount of \$4,500.00 that was due on April 1, 2023

(\$4,500.00 is the total amount of unpaid rent accrued up to the point the Notice was issued). 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 application relates to a section 46 notice to end tenancy, the landlord is entitled to an order for unpaid rent under section 55(1.1) of the Act. Therefore, the tenant is ordered to pay \$10,000.00 in unpaid rent to the landlord.

Pursuant to section 72 of the Act, the landlord is ordered to retain the \$2,750.00 security deposit and the \$2,750.00 pet damage deposit as partial satisfaction of the payment order. A monetary order for the remaining amount of \$4,500.00 is attached to this Decision and must be served on the tenant.

Since the tenant was not successful in its application, the tenant's application to recover the cost of the filing fee under section 72 of the Act is dismissed.

Conclusion

The application is dismissed without leave to reapply. The landlord is granted an order of possession and a monetary order in the amount of \$4,500.00.

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: June 09, 2023

Residential Tenancy Branch