



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR
 OPR-DR

Introduction

Under section 58 of the Residential Tenancy Act (the “Act”), this hearing dealt with the tenant’s April 7, 2023, application to the Residential Tenancy Branch for an order cancelling the notice to end tenancy for unpaid rent (the “Notice”), under section 46(4)(b) of the Act.

In addition, under section 58 of the Act, this hearing dealt with the landlord’s April 18, 2023, application to the Residential Tenancy Branch for an order of possession on the Notice under section 55(2)(b) 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?

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 19, 2022. Rent is \$500.00 due on the first day of the month.

The landlord served the Notice on April 7, 2023 by delivering to the tenant in person, who was there to receive it. Page two of the Notice indicates that the tenant did not pay

rent in the amount of \$2,500.00 that was due on April 1, 2023. All pages of the Notice were served and submitted into evidence.

The landlord affirmed that the tenant is currently \$3,000.00 in rental arrears, representing unpaid rent from December 2022 to May 2023 (6 months of unpaid rent).

The tenant affirmed that:

- the tenant did not pay rent in April and May 2023 due to an agreement with the landlord for the tenant to conduct certain repairs on the rental unit. In particular, the tenant had to:
 - install a door.
 - fix the shower head.
 - fix the faucet.
 - fix the toilet.
- the tenant has not submitted any evidence showing the landlord had agreed to the repairs in lieu of rent nor photos showing evidence of repairs needing to be done.
- the tenant paid December 2022 to March 2023's rent in cash. The tenant does not have any rental receipts proving payment. The only evidence the tenant has submitted is records of the tenant making certain withdrawals from the ATM machine.

In response, the landlord affirmed that:

- the landlord has not received any rent from the tenant starting from December 2022. The landlord did not receive any cash from the tenant during this period.
- there was no agreement for the tenant to conduct repairs in lieu of paying rent.

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, the landlord affirmed that:

- the tenant is currently \$3,000.00 in rental arrears, representing unpaid rent from December 2022 to May 2023 (6 months of unpaid rent). The landlord did not receive any cash from the tenant during this period.

- there was no agreement for the tenant to conduct repairs in lieu of paying rent.

In relation to the unpaid rent, the tenant affirmed that:

- the tenant did not pay rent in April and May 2023 due to an agreement with the landlord for the tenant to conduct certain repairs on the rental unit. The tenant has not submitted any evidence showing the landlord had agreed to the repairs nor photos showing evidence of repairs needing to be done.
- the tenant paid December 2022 to March 2023's rent in cash. The tenant does not have any rental receipts proving payment. The only evidence the tenant submitted is records of the tenant making certain withdrawals from the ATM machine.

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:

- in relation to the rent from April and May 2023, the tenant has not submitted any evidence showing the landlord had agreed to the repairs in lieu of rent nor photos showing evidence of repairs needing to be done. A reasonable person in the tenant's position would ensure there is some written record of this agreement before engaging in extensive repairs. In addition, a reasonable person in the tenant's position would have provided evidence of the repairs needing to be done. Therefore, I find that there was no agreement for the tenant to conduct repairs in lieu of paying rent.
- in relation to the rent from December 2022 to March 2023, the tenant did not provide any evidence of having actually made the relevant cash payments. While the tenant submitted records of the tenant making certain withdrawals from the ATM machine, this does not prove the tenant gave the cash to the landlord. A reasonable person in the tenant's position would request a rental receipt from the landlord and keep a record of having requested for this if they were making such

large payments in cash. If the tenant was unable to get a rental receipt from the landlord, a reasonable person in the tenant's position would apply to the Residential Tenancy Branch for an order requiring the landlord to provide rental receipts for rent paid in cash. Therefore, I find that the tenant did not pay December 2022 to March 2023's rent in cash.

For the above reasons, I find that the tenant is currently \$3,000.00 in rental arrears. As a result, I find on a balance of probabilities that the Notice was given for a valid reason. I also find that the Notice complies with the form and content requirements of section 52. As a result, 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 \$3,000.00 to the landlord. A monetary order for this amount 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 awarded an order of possession and a monetary award in the amount of \$3,000.00.

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 03, 2023

Residential Tenancy Branch