



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, LRE

Introduction

Under section 58 of the Residential Tenancy Act (the “Act”), this hearing dealt with the tenant’s April 16, 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; and
- (ii) an order to suspend or set conditions on the landlord's right to enter the rental unit under section 70 of the Act.

Preliminary Issue – amendment to address of rental unit

The landlord affirmed that the address of the rental unit is missing the unit number and sought to amend this. The tenant did not object to the amendment. In accordance with Rule 4.2 of the *Rules of Procedure*, the address of the rental unit has been amended as reflected on the cover page of this decision.

Preliminary Issue – mutual agreement to end tenancy

The parties informed me that they had entered into a settlement agreement on May 25, 2023, on the following terms:

- By May 29, 2023, the tenant to pay to the landlord via e-transfer the amount of \$1250.00 for the rent that was payable to the landlord on May 1, 2023. Plus, the outstanding BC HYDRO, in the amount of \$181.00.
- On June 1, 2023, the tenant will pay rent on time for June 2023, and every month thereafter, of \$1250.00 pursuant to the written tenancy agreement, and legal rent increases. Plus \$50.00 per month for the outstanding rent of April 1, 2023, by way of e-transfer. The additional \$50.00 a month will be paid until the

sum of \$1250.00 is paid in full and will be paid with the regular monthly rental payment due on the 1st of the month.

- The tenant understands that if the tenant fails to abide by the payments indicated in this settlement agreement, and if the payments are late, the tenant agrees that this settlement agreement can be presented to the Residential Tenancy Tribunal and that the Tenant consents to the arbitrator of the Residential Tenancy Branch issuing an immediate order of possession to the landlord.
- The tenant further agrees should the tenant default on this agreement that tenant will vacate the unit.

The landlord submitted evidence of the written settlement agreement, which was signed by both parties.

The landlord affirmed that, since entering into the settlement agreement, the landlord has not received any payments from the tenant.

The tenant affirmed that the tenant has not sent any payments to the landlord since entering into the settlement agreement.

Under section 44(1)(c) of the Act, a tenancy may be ended if the landlord and tenant agree in writing to end the tenancy. As the parties have mutually agreed in writing to end the tenancy if the tenant fails to make certain payments to the landlord, and both parties have affirmed that the tenant has failed to make these payments by the required deadline, I find the tenancy has ended by mutual agreement. Based on this, the tenant's application to cancel the Notice is dismissed without leave to reapply. The landlord is granted an order of possession. A copy of the order of possession is attached to this Decision and must be served on the tenant.

Issues

1. Is the landlord entitled to a monetary order for unpaid rent?
2. Is the tenant entitled to an order to suspend or set conditions on the landlord's right to enter the rental unit?

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 December 31, 2022. Rent is \$1,250.00 due on the first day of the month. The landlord currently retains a \$625.00 security deposit. There is a copy of the written tenancy agreement in evidence.

The landlord affirmed that:

- the landlord has not received any money from the tenant beginning April 2023.
- the tenant is currently \$3,936.00 in arrears, representing unpaid rent and utilities for the months of April, May and June 2023.

The tenant affirmed that:

- the tenant paid April 2023's rent in cash to the landlord in person on April 15, 2023. The tenant does not have any evidence of this meeting ever taking place or evidence of having made this cash payment.
- the tenant did not pay May 2023's rent as the tenant was away attending a funeral.
- the tenant did not pay June 2023's rent as the tenant's fridge had stopped working.

In response, the landlord affirmed that the landlord did not receive any cash from the tenant on April 15, 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.

The landlord's evidence is that:

- the tenant is \$3,936.00 in rental arrears, representing unpaid rent and utilities for the months of April, May and June 2023.
- the landlord has not received any money from the tenant beginning April 2023.

The tenant's evidence is that:

- the tenant paid April 2023's rent in cash to the landlord in person on April 15, 2023. The tenant does not have any evidence of this meeting ever taking place or evidence of having made this cash payment.
- the tenant did not pay May 2023's rent as the tenant was away attending a funeral.
- the tenant did not pay June 2023's rent as the tenant's fridge had stopped working.

In relation to the unpaid rent from April 2023, 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 having made the relevant cash payment. 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 a large payment 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. The tenant, however, did not provide evidence of having taken any of these steps. Therefore, I find that the tenant did not pay April 2023's rent to the landlord.

In relation to the unpaid rent from May 2023, the tenant's evidence was that rent was unpaid because the tenant was away attending a funeral. In relation to unpaid rent from June 2023, the tenant's evidence was that rent was unpaid because the tenant's fridge had stopped working. Neither of these are valid reasons for withholding rent. Therefore, I find that the tenant did not pay May and June 2023's rent to the landlord and did not have a valid reason to withhold rent.

Taking into consideration all of the evidence before me, I find on a balance of

probabilities that the tenant did not pay the rent as required under section 26(1) of the Act. Pursuant to section 67 of the Act, I have determined that the landlord suffered a monetary loss of \$3,936.00 due to the tenant's failure to pay rent, and order that the tenant pay this amount to the landlord.

Pursuant to sections 38 and 72 of the Act, the landlord is ordered to retain the \$625.00 security deposit as partial satisfaction of the payment order. A monetary order for the remaining amount of \$3,311.00 is attached to this Decision and must be served on the tenant.

The tenant's other claim relates to the tenant's ongoing possession of the rental unit. I dismiss the remaining claim because the tenancy has ended.

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 \$3,311.00.

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 29, 2023

Residential Tenancy Branch