



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, CNC, MNDCT, RP, LRE, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (Act) to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) issued on April 5, 2023, to cancel a One Month Notice to End Tenancy for Cause, (One Month Notice”) issued on April 4, 2023; for monetary compensation for money owed or loss, to have the landlord make repairs to the property, to suspend or set conditions on the landlords right to enter the rental unit or site and to recover the cost of the filing fee.

Both parties appeared, gave testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, 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.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice and the One Month Notice. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant’s request to set aside the Notice and the One Month Notice. The balance of the tenant’s application is dismissed, with leave to re-apply.

Issue to be Decided

Should the Notice be cancelled?

Should the One Month Notice be cancelled?

Are the landlords entitled to an order of possession and a monetary order?

Background and Evidence

The tenancy began on March 1, 2022. Rent in the amount of \$2,500.00 was payable on the first of each month. A security deposit of \$1,250.00 was paid by the tenant.

The tenant testified that they received the Notice on April 5, 2023. The tenant testified that they did not pay rent for April and have not paid any rent for May and June 2023.

The tenant stated they have not paid rent because the landlord took away part of their space and that the utilities are not properly portioned. The tenant stated that they are a single person lost their job and do not have the money to pay the rent.

The tenant writes in the details of their application the following:

Describe why you are disputing the notice:

This is being disputed as part of previous unreasonable 10 day notice for utilities and now tenancy. This situation has caused me severe mental trauma and I'm not able to concentrate on my work and am cash trapped. Both of the landlords just turn up without prior consent and feel as if I'm being harassed and is causing me mental stress.

The landlord stated that the tenant owes \$7,500.00 in unpaid rent as they would like to keep the security deposit to offset the amount owed. The landlord seeks an order of possession.

Analysis

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

In this case, although the tenant referred to a previous hearing held on April 18, 2023; however, the only reasons the Arbitrator cancel that notice to end tenancy for unpaid utilities, issued on March 24, 2023, was because the landlord did not wait the required 30 days after a written demand was issued before issuing the notice to end tenancy for unpaid utilities. That does not mean that the utilities are not owed.

Further, the Notice before me is about unpaid rent for April 2023, not unpaid utilities.

Section 26 (1) of the Act, states **a tenant must pay rent when it is due** under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

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.

Although the tenant filed an application for dispute resolution within the time limit permitted under the Act, I find the tenant's application had no merit as the tenant admitted rent was not paid within 5 days after receiving the Notice.

The tenant did not have the authority under the Act to withhold the rent for April 2023. At no time can a tenant simply withhold rent because they feel entitled to do so. The tenant must pay rent, even if, the landlord has not complied with the Act. Therefore, I find the Notice is valid and remains in full force. Therefore, I dismiss the tenant's application without leave to reapply.

Further, the tenant has failed to pay rent for May and June 2023. I find the tenant breached the Act when they failed to pay the rent under the terms of their tenancy agreement.

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

As the tenant's application is dismissed, I find the landlord is entitled to an order of possession and a monetary order for payment of unpaid rent, pursuant to section 55 of the Act.

I find that the landlords are 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, May and June 2023, pursuant to section 55(1.1) of the Act in the amount of **\$7,500.00**. I order that the landlord retain the security deposit of **\$1,250.00** in partial satisfaction of the claim and I grant the landlords an order under section 67 of the Act for the balance due of **\$6,250.00**. 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.

As I have ended the tenancy based on unpaid rent, I find I do not need to consider the merits of the One Month Notice.

Conclusion

The tenant's application is dismissed. The landlords are granted an order of possession and monetary order for unpaid rent.

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 13, 2023

Residential Tenancy Branch