



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, RR, PSF, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants filed under the *Residential Tenancy Act* (the “Act”) to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) issued on April 4, 2023, to reduce rent for repairs, services or facilities agreed upon but not provided, to have the landlord to provided services or facilities required by the tenancy agreement or law 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, and make submissions at the hearing.

Preliminary and Procedural Issues

The tenant’s application list MA, as a tenant. MA is not a tenant listed on the tenancy agreement, nor did MA sign the tenancy agreement. I find MA is an occupant who was entitled to live in the rental unit. Therefore, as MA is an occupant and not a tenant under the Act, I have removed MA from the style of cause.

I have corrected the spelling of the second landlord’s name. I find this not prejudicial to either party.

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. 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 tenant’s application to recover the filing fee at these proceedings. The balance of the tenant’s application is dismissed, with leave to reapply only should the tenancy continue.

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.

Issue to be Decided

Should the Notice be cancelled?
Are the landlords entitled to an order of possession?
Are the landlords entitled to repayment of rent owed?

Background and Evidence

The tenancy began on October 7, 2022. Rent in the amount of \$6,600.00 was payable on the first of each month. A security deposit of \$3,300.00 was paid by the tenant.

The tenant acknowledged that they received the Notice on April 4, 2023. The tenant stated they filed their application late because they thought it was five business days to dispute the Notice.

The tenant testified that they did not pay the outstanding rent within five days. The tenant stated that they believe it was about 8 days later. The tenant confirmed they have not paid rent for May and June 2023.

The landlord seeks an order of possession and a monetary order for rent owed. The landlord stated they are not prepared to give the tenant more time to vacate as they rely upon the rent to pay the mortgage.

Analysis

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

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.

Section 46 (1) of the Act, states a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 46 (4) of the Act, states a tenant who received a notice to end tenancy within 5 days after receiving a notice under this section may pay the overdue rent, in which case the notice has no effect or dispute the notice by making an application for dispute resolution.

Section 46(5) of the Act, states, if a tenant who received a notice does not pay the rent or make an application for dispute resolution in accordance with the Act, is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit.

Upon review of the Notice, I find the Notice is completed in accordance with the requirements of section 52 of the Act.

In this case, the tenant admitted they did not dispute the Notice within 5 days as required by the Act, even if I accepted the tenant reason for the late filing was because they thought it was 5 business days, which is not. I find the outcome would not change as the tenant admitted that they did not pay the outstanding rent within 5 days after receiving the Notice. I find the tenant failed to dispute the Notice within the statutory time limit and failed to pay the rent within 5 days after receiving the Notice. I find the Notice is valid and remains in effect. Therefore, I dismiss the tenant's application to cancel the Notice.

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.

Although the tenant paid the outstanding rent for April 2023, late to the landlords. The tenant admitted that they have not paid any rent for May and June 2023. I find the tenant breached the Act and owes the landlord repayment of rent of **\$13,200.00**, pursuant to section 55(1.1) of the Act. I order that the landlords retain the security deposit of **\$3,300.00** in partial satisfaction of the claim and I grant the landlords an order under section 67 of the Act for the balance due of **\$9,900.00**. 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.

Conclusion

The tenant's application is dismissed. The landlord is granted an order of possession and a monetary order for repayment of rent, which I have authorized the landlord to keep the security deposit to offset the amount owed..

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