



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, FFT

Introduction

Under section 58 of the Residential Tenancy Act (the “Act”), this hearing dealt with the tenant’s April 13, 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) authorisation to recover the cost of the filing fee under section 72 of the Act.

Preliminary Issue – tenant already left the rental unit

The tenant affirmed that the tenant vacated the rental unit on April 29, 2023. The current application before me for an order to cancel the Notice is moot since the tenant has already left the unit.

Section 62(4)(b) of the Act states that an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss the application to cancel the Notice.

Issues

1. Is the landlord entitled to a monetary order for unpaid rent?
2. 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 January 2, 2021, and ended on April 29, 2023. Rent was \$2,500.00 due on the first day of the month. The landlord currently retains a \$1,250.00 security deposit and a \$1,250.00 pet damage deposit. There is a copy of the written tenancy agreement in evidence.

The landlord affirmed that:

- the tenant is \$2,500.00 in rental arrears, representing unpaid rent from April 2023.
- the tenancy agreement is for a fixed term ending on July 1, 2023. The landlord submitted as evidence the written tenancy agreement, which reflects this.

The tenant affirmed that:

- on March 7, 2023, the tenant asked the landlord whether the lease would be renewed after the end of the term. On March 8, 2023, the landlord replied that the rental unit may be sold due to the landlord's husband's health issues and that the landlord will not require the tenant to stay for the entirety of the fixed term if the tenant wanted to vacate before July 1, 2023.
- the tenant received the Two Month Notice to End Tenancy for Landlord's Use of Property ("Two Month Notice") on March 15, 2023. The effective date of the Two Month Notice was June 30, 2023.
- On March 29, 2023, the tenant messaged the landlord informing the landlord that the tenant had found a new property and will be moving out at the end of April 2023.
- the tenant did not pay April 2023's rent as the tenant is entitled to an amount that is the equivalent to one month's rent from the landlord.

Analysis

Section 51 of the Act provides that a tenant, who receives a notice to end a tenancy under section 49 [*landlord's use of property*], is entitled to receive from the landlord an amount that is the equivalent to one month's rent payable under the tenancy agreement.

However, according to Policy Guideline 30 (Fixed Term Tenancies) ("PG30"), a landlord cannot give notice for landlord's use of property that will end a fixed term tenancy before the end of the fixed term. If a landlord wishes to end the tenancy for landlord's use of property, the landlord must serve a proper Two Month Notice to End Tenancy for Landlord's Use of Property (form RTB-32) on the tenant. The effective date of that Notice will be two months from the end of the month in which the Notice was served but in any case not before the end of the fixed term. The tenant may not, during the fixed term, give the landlord a minimum 10 day notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice.

In addition, PG30 further adds that during the fixed term, neither the landlord nor the tenant may end the tenancy except for cause or by agreement of both parties. A landlord and tenant may agree in writing to end a fixed-term tenancy before its expiry date.

The tenancy agreement shows that this is a fixed term tenancy ending on July 1, 2023. Therefore, it is not possible for this tenancy to be ended by the Two Month Notice before the end of the fixed term (July 1, 2023). Accordingly, the only way this tenancy could be ended before the end of the fixed term was for cause or by agreement of both parties. As there is no evidence of a One Month Notice to End Tenancy for Cause being issued, I find that the only possible way for the tenancy to be ended before the end of the fixed term is via the parties mutual agreement.

In relation to this, the tenant affirmed that:

- on March 7, 2023, the tenant asked the landlord whether the lease would be renewed after the end of the term. On March 8, 2023, the landlord replied that the rental unit may be sold due to the landlord's husband's health issues and that

the landlord will not require the tenant to stay for the entirety of the fixed term if the tenant wanted to vacate before July 1, 2023.

- On March 29, 2023, the tenant messaged the landlord informing the landlord that the tenant had found a new property and will be moving out at the end of April 2023.

Based on the tenant's evidence outlined above, I find that there was a mutual agreement to end the tenancy at the end of April 2023. Since the tenancy was ended by mutual agreement rather than via section 49 of the Act [*landlord's use of property*], I find that the tenant is not entitled to receive from the landlord an amount that is the equivalent to one month's rent. Therefore, the tenant was not entitled to withhold rent for April 2023.

Section 26 of the Act requires tenants to pay rent the day it is due unless they have a legal right to withhold rent.

Both parties agree that the tenant did not pay April 2023's rent. As mentioned above, the tenant was not entitled to withhold rent for April 2023. 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 \$2,500.00 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 \$1,250.00 security deposit and the \$1,250.00 pet damage deposit as satisfaction of the payment order.

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.

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