



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, OPR, MNR, FF

Introduction

This hearing was convened in response to applications by the landlord and the tenants.

The landlord's application is seeking orders as follows:

1. For an order of possession;
2. For a monetary order for unpaid rent;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

The tenants' application is seeking orders as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) issued on March 23, 2023; and
2. To dispute a rent increase.

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

At the outset of the hearing the tenant requested that this matter be adjourned because they have made a petition in the Supreme Court. The landlord stated that the matter in the Supreme Court is not about rent or the Notice.

In this case, I am not satisfied that the issue before the Supreme Court is substantially link to this matter. This is an issue of unpaid rent and whether the tenancy should continue. Therefore, I do not grant the tenant's request for adjournment.

Issues to be Decided

Should the Notice be cancelled?

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The tenancy began on November 1, 2021. Rent in the amount of \$3,200.00 was payable on the first of each month. A security deposit of \$1,600.00 and a pet damage deposit of \$1,000.00 were paid by the tenants.

The tenant testified that the landlord gave them a rent increase of \$64.00 commencing February 1, 2023; however, it was by email and not in the proper form.

The tenant testified that they received the Notice on April 5, 2023. The tenant stated that they had paid cash on April 1, 2023, for April rent and the landlord did not give them a receipt. The tenant stated that they also paid rent in cash for May on May 1, 2023. The tenant stated they have not paid rent for June 2023.

The landlord testified that they sent the tenant an email that the rent would be increased by 2%. The landlord stated that they put the notice of rent increase in the mailbox; however, they did not have a witness or take a picture because they had already informed the tenant.

The landlords testified that they never received rent in cash from the tenant for April or May 2023, rent.

Analysis

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

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

Section 26 of the Act requires tenants to pay rent on time, even if the landlord breached the Act, unless they have a legal right to withhold rent. Section 46 says when rent is

unpaid the landlord can end the tenancy by giving a 10-day notice on any day after rent is due. The tenant can only cancel the notice if they prove rent was paid or if they had the authority under the Act. Such as an order from an Arbitrator.

I do not find the tenant credible that they paid their rent to the landlord in cash on April 1, 2023. The tenant's testimony contradicts the reasons the tenants disputed the Notice in their application. The tenants' write in the details of their application that rent was sent by e-transfer on April 1, 2023, and did not have enough time to find out if in fact the landlord received it.

I find the tenant has provided false and misleading testimony at the hearing and in the written details of their application. I find the tenants did not pay rent for April 2023. I find the Notice issued is valid. Therefore, I dismiss the tenants' application to cancel the Notice.

I find it more likely than not that the tenant gave false testimony when they said rent for May 2023 was also paid in cash and the tenant admitted rent for June 2023 was not paid. I find the tenants have breached the Act when they failed to pay rent.

Since I have found the tenant to be uncredible, and I find the landlords testimony to be credible, because they gave consistent testimony. I find the tenants were served with the Notice of Rent Increase that was to take effect for February 1, 2023. Further, if the Notice of Rent Increase was not given showing \$64.00 per month, I find it highly unlikely that the tenant would then calculate the rent increase on their own and then pay it for the next two months. Therefore, I dismiss the tenant's application to cancel the rent increase.

I am satisfied rent was \$3,264.00. I am satisfied that the tenants failed to pay rent for April, May and June 2023. I find the tenants owe the landlord **\$9,792.00**.

As the tenant's application is dismissed in full without leave to reapply.

I find the landlords are entitled to an order of possession and a monetary order for repayment of unpaid rent, pursuant to section 55 of the Act.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenants. This order may be filed in the Supreme Court and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

I find the tenant owes the landlord **\$9,892.00** comprised of unpaid rent and the \$100.00 to recover the cost of the filing fee. I authorize the landlords to keep the security deposit of \$1,600.00 and the pet damage deposit of \$1,000.00, and interest of **\$21.25** to offset the amount owed. I grant the landlords a formal order for the balance due of **\$7,270.75**. This order may be filed in the Provincial Court and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

Conclusion

The tenants' application is dismissed. The landlords are granted an order of possession and a monetary order as set out above.

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 02, 2023

Residential Tenancy Branch