



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

CNR, MNDCT, RP, LRE, LAT, OLC, OPR

Introduction

This hearing was convened in response to applications by the landlords and the tenant.

The landlord's application is seeking orders as follows:

1. For an order of possession;
2. For a monetary order for unpaid rent; and
3. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) issued on April 4, 2023;
2. For monetary compensation for monetary loss or other money owed;
3. To have the landlord's make repairs to the rental unit;
4. To suspend or set conditions on the landlord's right to enter the rental unit;
5. To be allowed to change the lock; and
6. To have the landlord comply with the Act.

Only the landlords appears. The tenant did not appear at the hearing, although the tenant submitted their application to be heard. The tenant also received notification from the Residence Tenancy Branch (RTB) by email about evidence deadlines on April 21, 2023, and a final notification reminder on June 10, 2023, reminding them of today's hearing. This was the email address the tenant provided the RTB for service.

Therefore, I conducted the hearing in the absence of the tenant.. As the tenant failed to attend the hearing to provide testimony and evidence relating to their application. I dismiss the tenant's application without leave to reapply.

However, I must consider the provisions of section 55 of the Act, as the tenant disputed the Notice. The landlords were not required to make a separate application for the same relief, which I must consider under the Act.

I have removed TA from the style of cause on the tenant's application. TA is not listed on the tenancy agreement, nor did TA sign the tenancy agreement. I find at most; TA is an occupant with no legal rights or obligation under the Act.

Issue(s) to be Decided

Should the Notice be cancelled?

Are the landlord's entitled to an Order of possession and a monetary order for repayment of rent?

Background and Evidence

The tenancy began on February 1, 2023. Rent in the amount of \$1,300.00 was payable on the first of each month. A security deposit of \$650.00 was paid by the tenant.

The tenant submits in their application that they are disputing the Notice as follows:

Date notice was received:

Apr 11, 2023

Notice delivery method:

Other

Describe why you are disputing the notice:

Ignored concerns of safety to my child, infestation of silverfish, rat poop coming down from ceiling, complaints ignored, constant crime activity in other unit in house, and so much more.

The landlord testified that the tenant paid only the paid February 2023 rent. The landlord stated that the tenant owed \$300.00 for March and \$1,300.00 for April 2023, when the Notice was issued. The landlord stated that the tenant has not paid rent for May and June 2023.

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.

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.

The tenant did not attend the hearing to provide any testimony or evidence. The details of the tenant's application appear they are withholding rent because they feel they are entitled to do so. There is nothing in the details of the tenant's dispute that lead me to believe rent has been paid or that their complaints are grounds under the Act to withhold rent. The evidence of the landlord was that the tenant did not pay all rent for March 2023 and has failed to pay all subsequent rent. This is only one month after the tenancy commenced, which I will address later in my decision.

I find the tenant breached the Act when they failed to pay the rent due within 5 days of receiving the Notice. I have reviewed the Notice. The Notice does not indicate the effective date to which the tenant must vacate as required by section 52 of the Act; however, 68 of the Act allows me to amend a notice to end tenancy if I am satisfied that the person receiving the notice knew, or should have know, the information that was omitted from the notice and in the circumstance, it is reasonable to amend.

In this case, the Notice, clearly sets out that this is a 10 Day Notice to End Tenancy for Unpaid Rent, I find the tenant had to known that the landlord was ending the tenancy from 10 days after the Notice was received, which the tenant submits it was received on April 11, 2023. Therefore, I have amended the Notice to include an effective date of April 21, 2023.

Further, I find it would be highly prejudicial and unfair to the landlord not to amend the Notice, when the tenant has repeatedly breached the Act, and has not paid rent since March 2023. I find the Notice valid and remains in full force.

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 landlords are entitled to monetary order for the unpaid rent, pursuant to section 55(1.1) of the Act in the amount of **\$5,500.00**.

I find that the landlords have established a total monetary claim of **\$5,600.00** comprised of the above described amount and the \$100.00 fee paid for this application.

I order that the landlords retain the security deposit of **\$650.00** in partial satisfaction of the claim and I grant the landlords an order under section 67 of the Act for the balance due of **\$4,550.00**.

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.

This is case, the tenant stopped pay rent one month after the tenancy commenced. **I find it appropriate to caution the tenant that should a pattern of unpaid rent be established** that they will be referred to the Compliance and Enforcement Unit for an investigation. The Compliance and Enforcement Unit can apply fines up to \$5,000.00 per day and other penalties under the Act.

Conclusion

The tenant's application is dismissed without leave to reapply. The landlords are granted an order of possession and a monetary order for repayment of rent. The landlord is authorized to keep the security deposit to offset the rent 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