



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, FFT
 OPR-DR, MNR-DR

Introduction

Under section 58 of the Residential Tenancy Act (the “Act”), this hearing dealt with the tenant’s April 17, 2023, application to the Residential Tenancy Branch for:

- (i) an order cancelling the notice to end tenancy for unpaid rent (the “Notice”), under section 46(4)(b) of the Act; and
- (ii) authorization to recover the cost of the filing fee under section 72 of the Act.

In addition, under section 58 of the Act, this hearing dealt with the landlord’s April 13, 2023, application to the Residential Tenancy Branch for:

- (i) an order of possession on the Notice under section 55(2)(b) of the Act; and
- (ii) a monetary order for unpaid rent under section 67 of the Act.

Issues

1. Is the tenant entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession?
3. 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 March 1, 2022. Rent is \$2,100.00 due on the first day of the month. The landlord currently retains a \$1,050.00 security deposit.

The landlord served the Notice on April 12, 2023, by registered mail. Page two of the Notice indicates that the tenant did not pay rent in the amount of \$2,100.00 that was due on January 1, 2023. All pages of the Notice were served and submitted into evidence.

The landlord affirmed that:

- the tenant is currently \$8,400.00 in rental arrears, representing unpaid rent from January 2023 to April 2023.
- the last time the landlord received rent was in December 2022.

The tenant affirmed that:

- the tenant has either paid the rent or invoiced the landlord for emergency repairs.
- January to March 2023's rent was paid via e-transfer. The tenant did not submit any documentary evidence of the rent being paid.
- for April 2023's rent, the tenant had engaged in emergency repairs. Specifically, the tenant had sent the landlord 3 invoices each with the amount of \$1,050.00 for emergency snow removal.
- the tenant has also done other work for the landlord such as burying the landlord's dog.

Analysis

Section 26 of the Act requires tenants to pay rent the day it is due unless they have a legal right to withhold rent. Section 46(1) of the Act allows landlords to end a tenancy with a *10 Day Notice to End Tenancy for Unpaid Rent* on any day rent remains unpaid after the day rent is due.

In relation to January to March 2023's rent, the tenant affirmed that this was paid via e-transfer. The tenant did not submit any documentary evidence of the rent being paid. The landlord's evidence is that the last time the landlord received rent was in December 2022.

A useful guide regarding conflicting testimony, and frequently used in cases such as this, is found in *Faryna v. Chorny* (1952), 2 D.L.R. 354 (B.C.C.A.), which states at pages 357-358:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanor of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those circumstances.

Taking into consideration all of the evidence before me, I find the landlord's submissions to be more reasonable because the tenant did not provide any documentary evidence of the rent being paid via e-transfer. A reasonable person in the tenant's position would provide receipts showing the relevant e-transfers being sent. As the tenant has not submitted any evidence in this regard, I find that the tenant did not pay January to March 2023's rent.

In relation to April 2023's rent, the tenant affirmed that rent was withheld due to the tenant engaging in emergency repairs. Specifically, the tenant had sent the landlord 3 invoices each with the amount of \$1,050.00 for emergency snow removal.

Under section 33 of the Act, a tenant may claim reimbursement from a landlord for amounts paid for emergency repairs. Emergency repairs are defined under this section as repairs that are:

- urgent;
- necessary for the health or safety of anyone or for the preservation or use of residential property; and
- made for the purpose of repairing:
 - major leaks in pipes or the roof;
 - damaged or blocked water or sewer pipes or plumbing fixtures;
 - the primary heating system;
 - damaged or defective locks that give access to a rental unit; or
 - the electrical systems.

In addition, according to Policy Guideline 51, emergency repairs do not include things like repairs to a clothes dryer that has stopped working, mold removal, or pest control.

Based on the above definition of emergency repairs, snow removal would not qualify as an emergency repair as it is not made for the purpose of repairing:

- major leaks in pipes or the roof;
- damaged or blocked water or sewer pipes or plumbing fixtures;
- the primary heating system;
- damaged or defective locks that give access to a rental unit; or

- the electrical systems.

As snow removal does not qualify as emergency repairs, the tenant did not have a valid reason to withhold April 2023's rent.

The landlord's evidence establishes that the tenant is currently \$8,400.00 in rental arrears, representing unpaid rent from January 2023 to April 2023. As mentioned above, I find that the tenant did not have a valid reason to withhold rent. Therefore, I find on a balance of probabilities that the Notice was given for a valid reason. I also find that the Notice complies with the form and content requirements of section 52. As a result, the tenant's application to cancel the Notice is dismissed.

Based on the above findings, the landlord is granted an order of possession under section 55(1) of the Act. A copy of the order of possession is attached to this Decision and must be served on the tenant.

Since the landlord's application relates to a section 46 notice to end tenancy, the landlord is also entitled to an order for unpaid rent under section 55(1.1) of the Act. Therefore, the tenant is ordered to pay \$8,400.00 to the landlord.

Pursuant to sections 38 and 72 of the Act, the landlord is ordered to retain the \$1,050.00 security deposit as partial satisfaction of the payment order. A monetary order for the remaining amount of \$7,350.00 is attached to this Decision and must be served on the tenant.

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 tenant's application is dismissed without leave to reapply.

The landlord's application is granted. The landlord is awarded an order of possession and a monetary order in the amount of \$7,350.00.

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