



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

LANDLORD - OPU-DR, MNU-DR, MNDL, MNDCL, FFL

TENANT - CNR, MNRT, MNDCT, PSF, LRE, LAT, OLC, FFT

Introduction

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

The landlord's application is seeking orders as follows:

1. For an order of possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) issued on April 12, 2023;
2. For a monetary order for unpaid rent and utilities;
3. For a monetary order for damages to the rental unit or premises; and
4. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. To cancel the Notice;
2. To recover the cost of emergency repairs;
3. For monetary compensation for monetary loss or other money owed;
4. To have the landlord provide services or facilities required by law;
5. To suspend or set conditions on the landlord's right to enter the premises;
6. To be authorized to change the locks;
7. To have the landlord comply with the Act; and
8. To recover the cost of filing the application.

Only the landlord, landlord's agent and landlord's advocate appeared and 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.

The tenant did not appear, although this matter was scheduled for today at their request. The tenant also received a notification from the Residential Tenancy Branch (RTB) on June 17,

2023, reminding them of today's hearing. This was sent to the email address the tenant provided to the RTB for service. The hearing proceeded in the absence of the tenant.

As the tenant did not appear to provide any testimony or evidence on their application, I dismiss the tenant's application without leave to reapply. The tenant is not entitled to recover the cost of the filing fee.

However, I must consider the provisions of section 55 of the Act as I must grant the landlord an order of possession and a monetary order for repayment of unpaid. I will also consider the landlord's request for the balance of the unpaid utilities. I am satisfied that the tenant was served with the landlord's evidence as the landlord has provided a copy of the email sent to the tenant with the attached documents.

Issue(s) to be Decided

Is the Notice valid?

Is the landlord entitled to an order of possession and a monetary order for unpaid rent and/or utilities?

Background and Evidence

The tenancy began on January 1, 2023, for a fixed term expiring on August 31, 2024. Rent in the amount of \$2,300.00 was payable on the first of each month. The tenant moved in early on December 19, 2022. The tenant failed to pay the required security deposit and pet damage deposit.

The tenant is required to pay a flat fee of \$100.00 per month for water/sewer and is required to pay 65% of electricity and natural gas which the tenant was to make a prepayment for each of these services in the amount of \$100.00, and the tenant was to pay for any extra usage when the utility invoice became due.

The tenant acknowledged in their application that they received the Notice on April 12, 2023. The tenant submits the following details for disputing the Notice.

Date notice was received:

Apr 12, 2023

Notice delivery method:

Sent to pre-agreed email

Describe why you are disputing the notice:

The landlord has refused to clean the carpets upon moving in and paying Jan. Rent in full. as well as not dealing with a number of other issues. Too much to list but I have supporting documents to support ongoing harassment, unlawful entry to the rental unit,

essential services being turned off, locks being changed without giving me a new key, RCMP reports regarding the continued harassment.

The Notice shows the tenant had failed to pay rent in the amount of \$6,900.00 and failed to pay utilities in the amount of \$1,423.44. Filed in evidence is a copy of the Notice.

The landlord testified that the tenant did not pay the outstanding rent and has failed to pay subsequent rent for May and June 2023. The landlord stated that the tenant has further failed to pay subsequent utilities in the amount of \$929.86. Filed in evidence are copies of the utility invoices.

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, 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, 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.

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

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.

Although the tenant filed an application for dispute resolution, I find the tenant's application must be dismissed because the tenant did not pay the outstanding rent and utilities listed in the Notice.

Further, there is nothing in the details of the tenant's application that lead me to believe rent or utilities were paid or that the tenant had the authority under the Act to deduct all or a portion of the rent. I find it more likely than not that the tenant withheld rent because they feel they are entitled to do so. I find the tenant breached the Act, when they failed to pay rent for February, March, April, May and June 2023. I find the Notice is valid.

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 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 the tenant owes the landlord **\$11,500.00** in unpaid rent. I find that the landlord is entitled to repayment of rent owed, pursuant to section 55(1.1) of the Act.

I am also satisfied that the tenant owes unpaid utilities of \$1,423.44 that was listed in the Notice as subsequent utilities of \$929.86 for the billing periods upto the billing periods between May 26 to 30, 2023. I find the tenant owes the landlord **\$2,353.33** for unpaid utilities.

I find that the landlord has established a total monetary claim of **\$13,853.33** comprised of the above described amount and the \$100.00 fee paid for this application. 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.

I did not consider the landlord claim for damages to the rental unit or premises as this portion was premature. The landlord is at liberty to reapply. To ensure the landlord has the ability to serve the tenant once the tenant has complied with my order of possession. I find it appropriate to grant the landlord a substituted service order. The landlord is authorized to serve the tenant any future application for dispute resolution by email. I have noted the email of the tenant on the covering page of this decision. The landlord should provide a copy of this Decision at any further hearing to show I have authorized service upon the tenant by email.

Conclusion

The tenant's' application is dismissed. The landlord is granted an order of possession and a monetary order for unpaid rent and utilities.

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*.

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Dated: June 20, 2023

Residential Tenancy Branch