



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR

Introduction

Under section 58 of the Residential Tenancy Act (the “Act”), this hearing dealt with the tenant’s May 2, 2023, application to the Residential Tenancy Branch for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to section 46(4)(b) 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?

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 August 1, 2016. Rent is \$1,400.00 due on the first day of the month. The landlord currently retains a \$700.00 security deposit. There is a copy of the written tenancy agreement in evidence.

The landlord served the Notice on April 27, 2023, by delivering to the tenant in person, who was there to receive it. All pages of the Notice were served and submitted into evidence.

The landlord affirmed that:

- the tenant is currently \$5,446.72 in rental arrears, representing unpaid rent accumulating from February 2020 to the present.
- the tenant currently owes \$925.00 for utility fees, representing utility fees accumulating from February 2020 to the present. Under the tenancy agreement, the tenant is responsible for paying 60 percent of the utility fees.
- the total amount the landlord is seeking is \$6,371.72.

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.

The landlord's undisputed evidence shows that the tenant is currently \$5,446.72 in rental arrears. 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 application relates to a section 46 notice to end tenancy, the landlord is entitled to an order for unpaid rent under section 55(1.1) of the Act. Therefore, the tenant is ordered to pay \$6,371.72 in unpaid rent to the landlord.

Pursuant to sections 38 and 72 of the Act, the landlord is ordered to retain the \$700.00 security deposit as partial satisfaction of the payment order. A monetary order for the remaining amount of \$5,671.72 is attached to this Decision and must be served on the tenant.

Conclusion

The application is dismissed without leave to reapply. The landlord is awarded an order of possession and a monetary order in the amount of \$5,671.72.

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 22, 2023

Residential Tenancy Branch