



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 9, 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 October 1, 2021. Rent is \$2,177.70 due on the first day of the month. The landlord currently retains a \$1,067.50 security deposit. There is a copy of the written tenancy agreement in evidence.

The landlord served the Notice on May 4, 2023, by attaching a copy onto the door of the rental unit. Page two of the Notice indicates that the tenant did not pay rent in the amount of \$4,405.40 that was due on May 1, 2023. All pages of the Notice were served and submitted into evidence.

The landlord affirmed that:

- the tenant currently owes \$6,533.10 in unpaid rent representing rent for April, May and June 2023.
- the tenant also owes \$75.00 in NSF fees for April, May and June 2023 (the charge for each month is \$25.00). The landlord submitted as evidence the written tenancy agreement, which provides that non-sufficient funds (N.S.F.) cheques are subject to an administrative fee of \$25.00. The landlord also submitted as evidence a ledger, which shows the tenant has been paying the rent via pre-authorized cheques.
- the NSF fee of \$25.00 is roughly how much the bank charges the landlord for submitting NSF cheques.
- in total the tenant is currently \$6,608.10 in arrears, representing unpaid rent and NSF fees from April, May and June 2023.

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 is that the tenant currently owes \$6,533.10 in unpaid rent representing rent for April, May and June 2023.

Section 7 of the Residential Tenancy Regulations allows a landlord to charge an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent if the tenancy agreement provides for those fees.

In addition, according to Policy Guideline 4, a clause in a tenancy agreement providing for the payment by the tenant of a late payment fee will be a penalty if the amount charged is not in proportion to the costs the landlord would incur as a result of the late payment.

The landlord's undisputed evidence is that:

- the tenant owes \$75.00 in NSF fees for April, May and June 2023 (the charge for each month is \$25.00). The landlord submitted as evidence the written tenancy agreement, which provides that non-sufficient funds (N.S.F.) cheques are subject to an administrative fee of \$25.00. The landlord also submitted as evidence a ledger, which shows the tenant has been paying the rent via pre-authorized cheques.
- the NSF fee of \$25.00 is roughly how much the bank charges the landlord for submitting NSF cheques.

Based on the landlord's undisputed evidence, I find that the landlord is entitled to charge NSF fees for the following reasons:

- The written tenancy agreement provides that non-sufficient funds (N.S.F.) cheques are subject to an administrative fee of \$25.00.
- The NSF fee of \$25.00 is roughly how much the bank charges the landlord for submitting NSF cheques.
- The landlord submitted as evidence a ledger, which shows the tenant has been paying the rent via pre-authorized cheques.

Therefore, I find that the landlord is entitled to \$75.00 in NSF fees for April, May and June 2023.

Based on the above, the landlord's undisputed evidence shows that in total the tenant is currently \$6,608.10 in arrears, representing unpaid rent and NSF fees from April, May and June 2023. 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 \$6,608.10 in unpaid rent to the landlord.

Pursuant to sections 38 and 72 of the Act, the landlord is ordered to retain the \$1,067.50 security deposit as partial satisfaction of the payment order. A monetary order for the remaining amount of \$5,540.60 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 \$5,540.60.

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 30, 2023

Residential Tenancy Branch