



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

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A matter regarding PROSPERO INTERNATIONAL REALTY
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL, CNQ, FFT

Introduction

The Landlord seeks an order of possession and a monetary order for unpaid rent and for the application fee, pursuant to sections 26, 46, 55, and 72 of the *Residential Tenancy Act* (the “Act”). By way of cross-application the Tenant sought an order cancelling a notice to end the tenancy.

Issues

1. Is the Tenant entitled to an order cancelling a notice to end the tenancy?
2. Is the Landlord entitled to an order of possession?
3. Is the Landlord entitled to a monetary order for unpaid rent?
4. Is either party entitled to recover the cost of their application fee?

Evidence and Analysis

In a dispute resolution proceeding, the applicant must prove their claims on a balance of probabilities (meaning “more likely than not”). I have read all the parties’ submissions and evidence but refer only to the evidence and argument that I find relevant and necessary to explain the decision.

The tenancy began in 2018. Monthly rent is currently \$1,505.00 and the Tenant paid a \$725.00 security deposit. A copy of a written tenancy agreement was in evidence.

The Landlord’s agent (the “Landlord” for brevity) testified that the Landlord served a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) on the Tenant in person on March 10, 2023. The Notice indicated that unpaid rent in the amount of \$3,035.00 was due as of March 1, 2023. As of July 6, 2023, rent arrears (which include one NSF charge) are in the amount of \$7,750.00.

The Tenant did not dispute these facts. However, she testified that she desired some explanation as to why the notice to end tenancy was given and why there hadn't been more options given to her to work out a repayment plan. The Tenant had lost her job, was on medical leave, and had to wait for some time for medical EI to go into effect. Hence, the Tenant got behind on rent and has simply been unable to catch up. The Tenant has, she testified, "no income."

As an aside, while the parties signed a *Mutual Agreement to End a Tenancy*, the Tenant explained that she signed it under pressure, though the Landlord explained that they thought it was a more amicable option for ending the tenancy.

It should be noted that the Notice was served in person on March 10, 2023. Under section 46(4) of the Act a tenant who receives a 10 Day Notice to End Tenancy for Unpaid Rent must, within 5 days of receiving the notice, either pay the full amount of rent owing or dispute the notice by making an application for dispute resolution.

In this dispute, the Tenant made her application for dispute resolution on March 29, 2023, well past the five-day deadline. As such, pursuant to sections 46(5) and 55(2)(b) of the Act, the Tenant is conclusively presumed to have accepted the Notice and the Landlord is entitled to an order of possession of the rental unit.

Therefore, the Notice served on March 10, 2023, is upheld and the Tenant's application to dispute the Notice is dismissed. The Landlord is granted an order of possession of the rental unit. This order of possession, issued with this decision to the Landlord, must be served forthwith by the Landlord upon the Tenant.

Having carefully considered the submissions of the parties regarding the effective date of the order of possession, I exercise my discretion and set the effective date as July 31, 2023, at 1:00 p.m. The Tenant should be aware that the Landlord has been exceptionally lenient in exercising its rights under the Act, and that the Landlord's flexibility in being open to the tenancy ending on July 31, 2023, is, from my experience, almost unheard of. To that end, the Tenant is encouraged to continue making all reasonable efforts in finding a new home by the end of this month.

Regarding the Landlord's application for a monetary order, there is no dispute that rent arrears are \$7,750.00. The Landlord's application for these orders was successful and as such they are entitled to a further \$100.00 in compensation to pay for their application fee. In total, the Landlord is awarded \$7,850.00 pursuant to sections 55(4) and 72 of the Act. The Tenant's claim to recover the application fee is dismissed.

The Landlord is entitled, after the Tenant vacates the rental unit, to retain the security deposit in partial satisfaction of the amount owing, pursuant to section 38(4)(b) of the Act. The balance owing (\$7,125.00) shall be granted by way of a monetary order.

A copy of this monetary order, issued with the decision to the Landlord, must be served forthwith by the Landlord on the Tenant.

Conclusion

IT IS HEREBY ORDERED THAT:

1. The Tenant's application be dismissed, without leave to reapply.
2. The Landlord's application be granted.
3. The Landlord be awarded \$7,850.00 and authorized to retain the \$725.00 security deposit.
4. The Landlord be granted a monetary order for \$7,125.00.
5. The Landlord be granted an order of possession effective July 31, 2023.
6. The tenancy ends no later than at 1:00 p.m. on July 31, 2023.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: July 7, 2023

Residential Tenancy Branch