



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, LRE
 OPR-DR, FFL

Introduction

Under section 58 of the Residential Tenancy Act (the “Act”), this hearing dealt with the tenant’s May 11, 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) an order to suspend or set conditions on the landlord’s right to enter the rental unit under section 70 of the Act.

In addition, under section 58 of the Act, this hearing dealt with the landlord’s May 22, 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) authorization to recover the cost of the filing fee under section 72 of the Act.

Preliminary Issue - Unrelated Claims

Rules of Procedure 2.3 states that claims made in an application for dispute resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims.

It is my determination that the tenant’s and landlord’s claim regarding the Notice is not sufficiently related to the tenant’s other claim to warrant that they be heard together. I exercise my discretion to dismiss the tenant’s other claim with leave to reapply and will deal only with the Notice.

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 landlord 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 June 6, 2022. Rent is \$775.00 due on the first day of the month. The landlord currently retains a \$387.50 security deposit.

The landlord served the Notice on May 8, 2023, by attaching a copy to the door of the rental unit. Page two of the Notice indicates that the tenant did not pay rent in the amount of \$1,554.00 that was due on May 1, 2023. All pages of the Notice were served and submitted into evidence.

The landlord affirmed that the tenant is currently \$779.00 in arrears, representing unpaid rent accumulating from January 1, 2023.

The tenant affirmed that:

- the tenant was previously employed by the landlord and there was an arrangement for the tenant to do work for the landlord in lieu of paying rent. This employment relationship was ended in April 2023. The tenant does not owe any rent for this period as the tenant had done extensive work for the landlord, enough to cover the rent. However, the tenant did not submit any documentary evidence to show that the tenant had done extensive work for the landlord.
- since April 2023, the tenant's rent has been paid by welfare.
- the tenant had paid a \$200.00 pet damage deposit. However, the tenant did not submit any documentary evidence of having paid this deposit.

In response, the landlord affirmed that:

- there was an arrangement for the tenant to do work for the landlord in lieu of paying rent. However, the tenant did not work many hours.
- the landlord has already applied what the tenant has earned from the landlord towards the rent and there is still an arrears of \$779.00.
- the tenant never paid any pet damage deposit to the landlord.

Analysis

In relation to the pet damage deposit, 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 evidence of having made the pet damage deposit payment. A reasonable person in the tenant's position would keep a record of having made this payment and would submit it as evidence. Therefore, I find that the tenant did not pay any pet damage deposit to the landlord.

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 unpaid rent, the landlord's evidence is that:

- the tenant is currently \$779.00 in arrears, representing unpaid rent accumulating from January 1, 2023.
- there was an arrangement for the tenant to do work for the landlord in lieu of paying rent. However, the tenant did not work many hours.
- the landlord has already applied what the tenant has earned from the landlord towards the rent and there is still an arrears of \$779.00.

In relation to unpaid rent, the tenant's evidence is that:

- the tenant was previously employed by the landlord and there was an arrangement for the tenant to do work for the landlord in lieu of paying rent. This

employment relationship was ended in April 2023. The tenant does not owe any rent for this period as the tenant had done extensive work for the landlord, enough to cover the rent. However, the tenant did not submit any documentary evidence to show that the tenant had done extensive work for the landlord.

- since April 2023, the tenant's rent has been paid by welfare.

Relying on the above-mentioned guide regarding conflicting testimony found in *Faryna v. Chorny* (1952), 2 D.L.R. 354 (B.C.C.A.), and taking into consideration all of the evidence before me, I find the landlord's submissions to be more reasonable because the tenant did not submit any documentary evidence to show that the tenant had done extensive work for the landlord. A reasonable person in the tenant's position would submit documentary evidence to substantiate the alleged work that was done by the tenant, especially since this pertains to the tenant's rent. As the tenant did not provide any evidence in this regard, I find that the tenant did not cover the rental arrears via the work arrangement.

Based on the above, the landlord's evidence shows that the tenant is currently \$779.00 in arrears, representing unpaid rent accumulating from January 1, 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 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 \$779.00 to the landlord.

Since the landlord was successful in its application, the landlord is entitled to \$100.00 to cover the cost of the filing fee under section 72 of the Act. In total, the landlord is awarded \$879.00.

Pursuant to sections 38 and 72 of the Act, the landlord is ordered to retain the \$387.50 security deposit as partial satisfaction of the payment order. A monetary order for the remaining amount of \$491.50 is attached to this Decision and must be served on the tenant.

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 \$491.50.

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: July 05, 2023

Residential Tenancy Branch