



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *OPR, CNR, MNR, RR, PSF, MNSD, FF*

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*.

The landlord applied for an order of possession and for a monetary order for unpaid rent, and for the recovery of the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of the monetary claim.

The tenant applied to cancel the notice to end tenancy for non-payment of rent and for an order directing the landlord to reduce rent and provide services and facilities.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issues to be decided

Is the landlord entitled to an order of possession or should the notice to end tenancy be set aside? Is the landlord entitled to a monetary order? Is the tenant entitled to the remedies that they applied for?

Preliminary Matters

During the hearing, the tenant stated that he is currently residing in the rental unit. Accordingly, the landlord's application to retain the security deposit is dismissed with leave to reapply, after the tenancy has ended. The parties must follow the provisions of s.38 of the *Residential Tenancy Act*, to process the return of the security deposit.

Background and Evidence

The landlord entered into a tenancy agreement with tenant RA. The tenancy started on July 07, 2022. The rent is \$1,500.00 per month due on the fifteenth of each month. The rental unit is a two-bedroom suite, located in the basement of a two-storey home. The landlord lives upstairs. Prior to moving in the tenant paid a security deposit of \$750.00.

RA paid rent regularly by etransfer. The landlord filed copies of proof of rental payments by etransfer. The last payment of rent by etransfer was made by RA in the amount of \$1,500.00, which was the rent due on November 15, 2023.

The landlord testified that on December 02, 2023, the police were at her door asking about the occupants of the basement. The landlord accompanied the police to the basement and the door was opened by a person; the landlord did not recognize. The landlord made several unsuccessful attempts to contact RA, to find out RA's whereabouts and to get information on the person who was occupying the basement suite. The landlord found out that RA had moved out and had allowed FE to reside in the rental unit.

RA failed to pay rent on December 15, 2023. On February 17, 2024, the landlord served RA/FE a 10 Day Notice to end tenancy for unpaid rent, by posting the Notice on the door to the rental suite.

FE attended the hearing on behalf of RA. FE stated that RA allowed him to move into the rental unit on January 10, 2023 and he shared the rental unit with RA. In March of 2023, RA moved out and wrote a sublet agreement naming FE as the tenant he had sublet to. FE shared the rental unit with his son. RA continued to pay rent by etransfer, up to and including November 2023. RA/FE did not file evidence to indicate RA had sublet the rental unit with the landlord's permission.

FE stated that on December 02, 2023, he made a rent payment of \$6,000.00, in cash to the landlord, NG, for the months of December 2023 to March 15, 2024. The landlord denied having received cash from FE. FE did not file proof of having paid this amount.

The landlord is claiming rent for the period of December 15, 2023 to March 15, 2024 in the total amount of \$6,000.00. The landlord is also claiming the recovery of the filing fee of \$100.00. The tenant has applied for the cancellation of the 10 Day Notice to end tenancy.

Analysis

Pursuant to section 46 (4) of the *Residential Tenancy Act* within five days after receiving the notice to end tenancy, the tenant may pay the overdue rent or dispute the notice by making application for dispute resolution. If the tenant does not pay rent or dispute the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit, by that date.

The tenant received the notice to end tenancy for unpaid rent, on February 17, 2024 and did not pay rent within five days of receiving the notice to end tenancy and the time to do so has expired.

In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the notice. Pursuant to section 55(2), I am issuing a formal order of possession effective two days after service on the tenant. The order may be filed in the Supreme Court for enforcement.

The tenant testified that he had paid \$6,000.00 in cash to the landlord in December 2023 to cover rent in advance for the following four months, up to March 2024. The tenant did not file proof of having paid this amount and the landlord denied having received rent in cash from FE.

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides testimony of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

In this case FE testified that he has paid rent in cash in advance but did not file evidence to prove that he had. The landlord was firm in her position that rent was not paid by the FE. In the absence of other evidence to support his claim that rent was paid and on a balance of probabilities, I find that it is more likely than not that FE owes rent for four months in the amount of \$6,000.00.

Since the landlord is successful in her application, I award the landlord the recovery of the filing fee.

Overall, the landlord has established the following claim:

1.	Unpaid rent for December 2023 to March 2024	\$6,000.00
2.	Filing fee	\$100.00
	Total	\$6,100.00

Since the tenancy is ending, the tenant's application for a rent reduction and for the provision of services/facilities is dismissed without leave to reapply.

Conclusion

I grant the landlord an order of possession effective two days after service on the tenant. I also grant the landlord a monetary order in the amount of **\$6,100.00**.

The tenant's application is dismissed in its entirety.

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: March 28, 2024

Residential Tenancy Branch