



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, OPR-DR, MNR-DR, FFL

Introduction

This hearing dealt with the Tenant's February 29, 2024, and the Landlord's March 4, 2024, Applications for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

The Tenant Applied For:

- cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) under sections 46 and 55 of the Act

The Landlord Applied For:

- an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) under sections 46 and 55 of the Act
- a Monetary Order for unpaid rent under section 67 of the Act
- authorization to recover the filing fee for this application from the Tenants under section 72 of the Act

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

- I find that Landlord A.T. was served on March 4, 2024, in accordance with section 89(1) of the Act.
- I find that Tenant F.M. was served on November 30, 2023, by registered mail in accordance with section 89(1) of the Act. The Landlord provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this service.

Service of Evidence

- Based on the submissions before me, I find that the Tenant's evidence was served to the Landlord in accordance with section 88 of the Act.
- Based on the submissions before me, I find that the Landlord's evidence was served to the Tenant in accordance with section 88 of the Act.

Issue(s) to be Decided

1. Is the Tenant entitled to a cancellation of the 10 Day Notice to End Tenancy for unpaid rent?
2. Is the Landlord entitled to an Order of Possession based on the Notice?
3. Is the Landlord entitled to a Monetary Order for unpaid rent?
4. Is the Landlord entitled to recover the filing fee?

Background and Evidence

I have reviewed all evidence, including the testimony of both parties but will refer only to what I find relevant for my decision.

Evidence and testimony provided by the parties indicates that the tenancy began on June 15, 2021, with a monthly rent of \$1,050.00 due on the fourteenth of each month. A deposit of \$500.00 was paid.

The Landlord testified that she served the Tenant with a 10 Day Notice on February 25, 2024, in-person for unpaid rent in the amount of \$1,600.00.

According to the Landlord the Tenant failed to pay rent as follows:

- \$500.00 for rent due for February 2023
- \$50.00 for rent due for January 2024
- \$1,050.00 for rent due in February 2024

The Landlord testified that rent is paid in cash and that no receipts were issued to the Tenant after 2021 because the Tenant told her that he did not want them. The Landlord later stated that she did create receipts for the Tenant's rental payments but had kept them since the Tenant did not want them. Copies of text messages between the parties discussing rent payments as well as receipts for the period July 14, 2021 to February 15, 2024, with the exception of June and August 2021 and January 2024, were submitted by the Landlord as evidence.

The Tenant testified that he paid his rent in full for January and February 2024 and that the Landlord had agreed to apply his \$500.00 security deposit to his rent in February 2023 to cover the balance owing.

The Tenant further testified that he did not tell the Landlord that he did not want receipts for his cash rental payments and that the Landlord only provided them to him after his numerous requests. He testified that the Landlord created them all following his March 22, 2024, request and fabricated the amounts paid to match her claim of unpaid rent and that his name was even misspelled on the receipts. Copies of the Tenant's text message requests for the receipts were submitted by the Tenant as evidence.

According to the Tenant, the Landlord approached him and asked him to agree to raise the rent by \$150.00 per month and after he declined, the 10 Day Notice was issued.

The Landlord denied requesting additional rent.

Analysis

Are the Tenants entitled to a cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent?

Under section 46(4) of the *Act*, a tenant who receives a notice for unpaid rent must do one of the following within 5 days of receipt of the notice:

- pay the overdue rent, in which case the notice has no effect, or
- dispute the notice by making an application for dispute resolution.

Based on the method of service used by the Landlord, the Tenant's application for dispute resolution on February 29, 2024, is in compliance with the 5-day requirements under section 46(4) of the *Act*.

Section 26 of the *Act* states that a tenant must pay rent to the landlord, regardless of whether the landlord complies with the *Act*, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the *Act*.

Relying on the testimony of both parties, the evidence submitted and on a balance of probabilities, I find that the Landlord has not provided sufficient evidence to meet her onus of proof that the Tenant did not pay his full rent during the months in question.

Under section 26(2), the Landlord is required to provide receipts to the Tenant for payments made in cash. I find that the Landlord provided contradictory testimony during the hearing by initially claiming she only issued receipts for 2021 and then subsequently testifying that she did issue receipts but did not provide them to the Tenant because he did not want them. I further find that the receipts were only provided to the Tenant in March 2024, after his repeated requests and that the purported receipts, the misspelling of the Tenant's name notwithstanding, did not specify what

months they were for or who had issued them but rather only included the date on which they were issued and the amount paid and therefore I am unable to confirm there validity, accuracy or applicability to any specific months of this tenancy.

I hereby grant the Tenant's application to cancel the notice of February 25, 2024. The notice is of no force or effect and the tenancy continues until such time as it is ended in accordance with the Act.

Is the Landlord entitled to an Order of Possession based on the Notice?

The Tenant's application to set aside the Landlord's notice to end tenancy is granted and the notice is cancelled, therefore the Landlord is not entitled to an Order of Possession based on the February 25, 2024, notice. The Landlord's application for an Order of Possession is dismissed without leave to apply.

Is the Landlord entitled to a Monetary Order for unpaid rent?

The Tenant's application to set aside the Landlord's notice to end tenancy is granted and the notice is cancelled, therefore the Landlord is not entitled to a Monetary Order for unpaid rent based on the February 25, 2024, notice. The Landlord's application for a Monetary Order is dismissed without leave to apply.

Is the Landlord entitled to recover the filing fee?

As the Landlord was not successful in this application, the Landlord's application for authorization to recover the filing fee for this application from the Tenants under section 72 of the Act is dismissed, without leave to reapply.

Conclusion

The Tenants' application for cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) issued February 25, 2024, under sections 46 and 55 of the Act is granted. The notice is of no force or effect and the tenancy continues until such time as it is ended in accordance with the Act.

The Landlord's application for an Order of Possession under sections 46 and 55 of the Act is dismissed without leave to reapply.

The Landlord's application for a Monetary Order for unpaid rent under section 67 of the Act is dismissed without leave to reapply.

The Landlord's application for authorization to recover the filing fee for this application from the Tenants under section 72 of the Act is dismissed, without leave to reapply.

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: April 10, 2024

Residential Tenancy Branch