



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

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DECISION

Introduction

The Tenant seeks various relief under the *Residential Tenancy Act* (the “Act”) including a claim for an order cancelling a notice to end the tenancy.

Rule 6.2 of the *Rules of Procedure* is applied and only the Tenant’s request for an order cancelling a notice to end the tenancy is addressed in this decision. All remaining claims are dismissed with leave to reapply, except for the application for an order cancelling a One Month Notice to End Tenancy for Cause, which is dismissed without leave to reapply.

By cross-application the Landlord seeks an order of possession and a monetary order.

Issue

1. Is the Tenant entitled to an order cancelling a notice to end the tenancy?
2. If not, is the Landlord entitled to an order of possession and a monetary order?

Background and Evidence

In an application under the Act where a tenant disputes a notice to end tenancy, the respondent landlord must prove the reason for issuing the notice to end tenancy on a balance of probabilities. Stated another way, the evidence must show that the events in support of the reason for issuing the notice to end tenancy were more likely than not to have occurred.

The tenancy began in 2017 and the monthly rent is currently \$2,940.00. The rent is due on the first day of the month and there is a \$1,300.00 security deposit in trust. There is a written tenancy agreement in place.

On June 2, 2024, the Landlord served a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) in person upon the Tenant. A copy of the Notice was in evidence. The Landlord testified that he served the Notice because the Tenant had not paid rent when it was due on June 1.

The Landlord subsequently issued another 10 Day Notice to End Tenancy for Unpaid Rent on the door of the rental unit on July 5, 2024. The Landlord testified that the Tenant has not paid any rent for June and July 2024. All rent has and had been paid by e-transfer. The Tenant testified that she has not paid any rent because, in her opinion, the Landlord has or had repeatedly breached section 28 of the Act (right to quiet enjoyment). The Landlord has been purportedly harassing the Tenant.

Indeed, the Tenant's lawyer sent a letter to the Landlord on May 27, 2024, outlining this purported breach. The Tenant submitted that she is due compensation for this purported breach and as such is not required to pay the rent. Last, the Tenant acknowledged that rent has not been paid for June and July 2024.

Analysis

Section 26 of the Act states that

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

If a tenant does not comply with section 26 of the Act, then a landlord may, under section 46 of the Act, serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent.

The facts are undisputed: the Tenant did not pay the rent of \$2,940.00 when it was due on June 1, 2024. The Tenant has also not paid the rent of \$2,940.00 when it came due on July 1, 2024. While there are specific sections of the Act permitting a tenant to withhold or not pay rent, a landlord's purported, alleged, or even actual breach of section 28 of the Act is not one of those sections. (Those sections are 19(2), 43(5), 51(1.1), 51.4(2), 65(1), and 72(2)(a).)

In short, while I acknowledge that the Tenant may have suffered a breach of her rights under section 28 of the Act—and I make no findings of fact or law on this issue—the Tenant quite simply did not have a legal right under the Act to not pay rent on June 1 and again on July 1.

Taking into careful consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the Landlord has met the onus of proving the ground on which the Notice was issued.

Therefore, pursuant to section 55(1) of the Act the Tenant's application for an order cancelling the Notice is dismissed and the Landlord is granted an order of possession.

Further, pursuant to section 55(1.1) of the Act the Landlord is granted an order requiring the Tenant to pay rent arrears in the amount of \$5,880.00. The Landlord is further awarded \$100.00 under section 72 of the Act for the cost of the Landlord's application.

In total, the Landlord is awarded \$5,980.00. The Landlord is authorized and ordered, under section 38(4)(b) of the Act to retain the Tenant's \$1,300.00 security deposit in partial satisfaction of the amount awarded.

The balance of \$4,680.00 must be paid by the Tenant to the Landlord as soon as possible. A monetary order for this amount is issued with this Decision to the Landlord.

The Landlord must immediately serve a copy of the order of possession and the monetary order upon the Tenant.

Conclusion

The Tenant's application is respectfully dismissed, with and without leave to reapply.

The Landlord's application is granted, as set out above.

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

Dated: July 30, 2024

Residential Tenancy Branch