



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ABF Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”), issued on April 7, 2021.

Only the landlord appeared. The tenant did not appear although this hearing was scheduled at their request and the tenant was also sent a reminder on August 13, 2021 of today’s hearing from the Residential Tenancy Branch to the email address the tenant provided as a service address. As the tenant did not appear the hearing proceeded in their absence.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to relevant facts and issues in this decision.

Issue to be Decided

Should the Notice be cancelled?

Background and Evidence

The tenant submits the following in their application for dispute resolution.

“My rent is \$1067 per month. Last month I paid \$3265. due to past due amounts. Now she is billing me \$3595 and I have no idea where this number is coming from. If it is due to COVID I think there should be a payment plan. I feel she is trying to evict long term tenants to rent out at another price. I know for a fact other tenants are many months behind on their rent”.

[Reproduced as written.]

The landlord stated that they were not served with the tenant's application and only found out about the hearing as they had received an email notification from the Residential Tenancy Branch; however, they received a courtesy copy from the Residential Tenancy Branch.

The landlord testified that the tenant's rent was not \$1,067.00, it was \$1,265.00 as the tenant had received rent increases during their tenancy. Filed in evidence is a Notice of Rent Increase stated that on August 1, 2018 rent of \$1,265.00 was payable.

The landlord testified that the tenant had a long history of rental account delinquency, which became worse during the pandemic. The landlord stated that the tenant did not pay any rent for April, May, June, July 2020 and only paid \$160.00 in August 2020. The landlord stated that the total rent arrears equaled the amount of \$6,165.00.

The landlord testified that the tenant was offered on September 25, 2020 a repayment plan that was to commence on November 1, 2020 and a monthly payment of \$500.00 for a 9-month period was to be paid in addition to the monthly rent. Filed in evidence is a copy of the repayment plan.

The landlord testified that on April 7, 2021 they issued the Notice to the tenant for failing to pay rent for April 2021 and the unpaid portion for the repayment plan totalling the amount of \$3,595.00. Filed in evidence is a copy of the rent ledger. Filed in evidence is a copy of the Notice.

The landlord testified that on April 16, 2021 the tenant paid the amount of \$1,266.50; however, that was not received within 5 days and was not the full amount due. The landlord seeks an order of possession.

The landlord testified that since September 2020, the tenant has paid the following:

September 2020 to January 2021 the monthly amount of \$1,266.50 (\$6,332.50); February 2021 the tenant paid \$3,200.00; No rent was paid in March 2021; April 2021 the tenant paid the amount of \$1,266.50; May 2021 the tenant paid the amount of \$1,766.50; June 2021 no rent was paid; July 2021 the tenant paid \$1,500.00; and August 2021 the tenant paid the amount of \$1,300.00. The landlord stated that this equals the amount of \$15,365.50 and the balance due of rent was the amount of \$15,180.00. The landlord stated that the balance of \$185.50 was applied to the

outstanding rent in the repayment plan leave the balance of unpaid rent in the amount of \$5,979.50. The landlord seek a monetary order for the unpaid rent.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

How to end a tenancy is defined in Part 4 of the Act.

Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2) A notice under this section must comply with section 52 [form and content of notice to end tenancy].

...

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

Upon review of the Notice, I find the Notice is completed in accordance with the requirements of section 52 of the Act.

I accept the undisputed testimony of the landlord that the tenant failed to pay rent for April 2021 and the rent due under the repayment plan. I accept that the tenant was served with the Notice as the tenant acknowledged that they received the Notice in their application on April 8, 2021.

The tenant did not pay the outstanding rent for April, until April 16, 2021, this was not within 5 days of receiving the Notice. Further, the tenant did not pay the balance due under the repayment plan. I find the Notice is valid and remains in full force and effect. Therefore, I dismiss the tenant's application without leave to reapply.

As the tenant's application is dismissed, I find the landlord is entitled to an order of possession, pursuant to section 55 of the Act.

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [*landlord's notice: non-payment of rent*], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

I have reviewed the landlords claim for unpaid rent. I find the landlord's calculation is correct. I find I must grant the landlord a monetary order for the unpaid rent in the amount of **\$5,979.50**.

I granted the landlord a formal order pursuant to section 55 (1.1) and 67 of the Act. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

At the conclusion of the hearing the landlord indicated that they have an outstanding file that proceeded by the directed request process. As the landlord received an order of possession and a monetary order at this hearing, the landlord agreed that it is appropriate to withdraw that matter as they would not be entitled to a second monetary

order for the same unpaid rent. Therefore, I have withdrawn that application. I have noted the file number on the covering page of this decision.

Should for any reasons this decision be reheard. I find the landlord's application noted on the covering page of this decision should be joined for all purposes. The landlord would have to bring this finding to the attention of the Residential Tenancy Branch should this occur.

Conclusion

The tenant's application is dismissed. The landlord is granted an order of possession and a monetary order for the unpaid rent.

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: August 17, 2021

Residential Tenancy Branch