



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, PSF, OLC, FFT, OPR-DR, FFL

Introduction

This hearing dealt with cross applications filed by the parties. On January 28, 2022, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") pursuant to Section 46 of the *Residential Tenancy Act* (the "*Act*"), seeking the provision of services or facilities pursuant to Section 62 of the *Act*, seeking an Order to comply pursuant to Section 62 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On January 28, 2022, the Landlord made an Application for Dispute Resolution seeking an Order of Possession based on the Notice pursuant to Section 46 of the *Act* and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Landlord attended the hearing, with D.M. attending as an agent for the Landlord; however, the Tenant did not attend at any point during the 40-minute teleconference. At the outset of the hearing, I informed the parties that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged this term. As well, all parties in attendance provided a solemn affirmation.

As the Tenant did not attend the hearing, his Application has been dismissed without leave to reapply.

D.M. advised that the Landlord's Notice of Hearing and evidence package was served to the Tenant by posting it to the Tenant's door on March 5, 2022. Based on this undisputed testimony, I am satisfied that the Tenant has been duly served the Landlord's Notice of Hearing and evidence package. As such, I have accepted this evidence and will consider it when rendering this Decision. However, the Landlord's late evidence was not served to the Tenant in accordance with the timeframe requirements of Rule 3.14 of the Rules of Procedure. As such, this evidence has been excluded and will not be considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord advised that the tenancy started on October 1, 2021 and that the tenancy ended when the Tenant gave up vacant possession of the rental unit on April 5, 2022. Rent was established at an amount of \$1,300.00 per month and was due on the first day of each month. A security deposit of \$600.00 and a pet damage deposit of \$600.00 were also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

She testified that the Notice was served to the Tenant by posting it to his door on January 4, 2022. The Notice indicated that \$900.00 was owing for rent and it was due on January 1, 2022. The effective end date of the tenancy was noted on her copy as January 14, 2022.

Submissions were made regarding the non-payment of rent for January, February, March, and April 2022; however, the Landlord stated that she was no longer seeking compensation for these amounts. As well, D.M. testified that it was the Landlord's position that the Tenant gave his written permission to keep the security deposit and pet damage deposit.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

As the Tenant's Application was dismissed in its entirety, and as the Tenant has already given up vacant possession of the rental unit, it is not necessary to grant an Order of Possession to the Landlord. In addition, as the Tenant's Application was dismissed, he was not successful. Therefore, I find that the Tenant is not entitled to recover the filing fee.

Furthermore, as the Landlord is not seeking a Monetary Order for the unpaid rent, there is nothing to consider in the Landlord's Application with respect to this issue. As such, the Landlord is still permitted to make an Application for the unpaid rent in a future Application, if necessary. However, as it was necessary for the Landlord to make this Application to be granted an Order of Possession for unpaid rent, I find that the Landlord is entitled to recover the filing fee.

Conclusion

Based on the above, the Tenant's Application is dismissed without leave to reapply.

In addition, the Landlord is provided with a Monetary Order in the amount of **\$100.00** in the above terms, and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 8, 2022

Residential Tenancy Branch