



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, FFT

Introduction

The Tenant applied for dispute resolution (“Application”) and seeks an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to section 46(4)(b) of the *Residential Tenancy Act* (the “Act”). They are also seeking to recover the cost of the filing fee under section 72 of the Act.

The Tenant and their Agent, D.B., attended the hearing. The Landlord also attended the hearing. The parties affirmed to tell the truth during the hearing. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

As both parties were present, service was confirmed at the hearing. The parties each confirmed receipt of the Notice of Dispute Resolution Package (the “Materials”) and evidence. Based on their testimonies I find that each party was served with these materials as required under sections 88 and 89 of the Act.

Issues to be Decided

- 1) Should the Notice be cancelled?
- 2) If not, is the Landlord entitled to an Order of Possession?
- 3) Is the Landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

The parties agreed on the following regarding the tenancy:

- The tenancy started on January 22, 2022.
- Rent was initially \$1,400.00 per month due on the first day of the month plus a flat fee of a \$190.00 per month for utilities, which would be reviewed annually.
- A security deposit of \$700.00 was paid by the Tenant which the Landlord still holds.
- There is a written tenancy agreement (the “Tenancy Agreement”) which was entered into evidence by both parties.
- The Tenant still occupies the rental unit.

The Landlord testifies as follows. They served the Notice to the Tenant via email and by attaching to the door of the rental unit on March 15, 2023 after rent was paid late. They further explained that they were unsure how to fill out the amount of rent owed on the Notice but stated that the Tenant underpaid rent by \$20.00 for the Month of March 2023. The Tenant also owes \$20.00 for the month of April 2023. The Tenant paid \$1,570.00 for rent due on March 1, 2023 and April 1, 2023.

A copy of the Notice was entered into evidence by both parties. It is signed March 15, 2023 and provides an effective date of March 25, 2023. The amount of outstanding rent provided is “\$1,590.00 + \$5/day”.

The Tenant testified as follows. They received a letter from the Landlord dated December 12, 2022 advising them of a rent increase and that utilities would be charged at \$170.00 instead of \$190.00 per month, effective March 1, 2023.

A Notice of Rent Increase (RTB-7) was served onto the Tenant, effective March 1, 2023 but as there was an error on the from, a further one was served, effective May 1, 2023.

The Tenant made the payment of \$1,570.00 for the rent due March 1, 2023 and the same amount on April 1, 2023. They calculated rent to be \$1,400.00 as the rent increase would not take effect until May 1, 2023. They had also been instructed that utility payments would be \$170.00 per month, effective March 1, 2023. Accordingly, a payment of \$1,570.00 (\$1,400.00 + \$170.00) was made.

Copies of the two Notice of Rent Increase forms were entered into evidence by the Landlord. The first is signed November 18, 2022 and (incorrectly) provides that current rent is \$1,410.00 with an increase of \$28.00, plus \$170.00 for utilities for a total of \$1,608.00 due per month, effective March 1, 2023. The second form is signed January 15, 2023 and provides current rent of \$1,400.00 with an increase of \$28.00, plus \$170.00, bringing total monthly rent to \$1,598.00, effective May 1, 2023.

The parties agreed that the first Notice of Rent Increase form had been rescinded and that a rent increase of \$28.00 would take effect May 1, 2023. The parties also agreed that utilities payable under the Tenancy Agreement would be \$170.00 per month, effective March 1, 2023.

Analysis

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some, or all, of the rent.

Section 46(1) of the Act allows landlords to end a tenancy if the tenant does not pay rent on time by issuing a 10 Day Notice to End Tenancy for Unpaid Rent.

Based on the testimony from both parties, I find that the Landlord rescinded the Notice of Rent Increase effective March 1, 2023, which contained an incorrect current amount of rent. I also find that the Notice of Rent Increase effective May 1, 2023 to be valid and increases the rent by 28.00, or 2% of current rent which is premised by the *Residential Tenancy Regulations*. Accordingly, rent will be increased from \$1,400.00 to \$1,428.00, effective May 1, 2023. Additionally, I find that parties agreed that the payment for utilities under the Tenancy Agreement was \$170.00 per month, effective March 1, 2023.

Accordingly, the total payment the Tenant was due to pay under the Tenancy Agreement on March 1, 2023 was \$1,570.00 (\$1,400.00 + \$170.00). Based on the testimony of both parties, the Tenant paid \$1,570.00 on March 1, 2023. Therefore, I find

on a balance of probabilities that the Notice was not given for a valid reason, namely, the non-payment of rent, as the full amount of rent due was paid by the Tenant.

Furthermore, I find that the Notice lists a wildly inaccurate amount of outstanding rent and it is also not clear what the total amount of rent owed is. The Landlord testified that, by their calculations, \$20.00 was owed by the Tenant, though it was not clear to me why the Landlord was requesting an amount of \$190.00 for utilities to be paid on March 1, 2023 when their letter dated December 12, 2023 makes it clear that utilities would be \$170.00 per month, effective March 1, 2023.

The figure of “\$1,590.00 + \$5/day” provided on the Notice does not make it clear how much the Tenant ought to pay, should they wish. Section 52(d) of the Act states that for a Notice to End Tenancy to be effective, the grounds for ending the tenancy must be stated. I find that the Notice is defective as it does not comply with section 52 of the Act as the grounds for ending the tenancy, i.e. the amount of unpaid rent, are not clear.

Based on the above, I grant the Tenant’s Application and order the 10 Day Notice to End Tenancy for Unpaid Rent dated March 15, 2023 is canceled and is therefore of no force or effect. The Tenancy continues.

Conclusion

The Application is granted. The tenancy continues.

As the Tenant has been successful in their Application I find they are entitled to the reimbursement of the filing fee. I order that the Tenant may make a **one-time deduction of \$100.00** from a future rent payment in satisfaction of the return of the filing fee.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: April 28, 2023

Residential Tenancy Branch