



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

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

Introduction

Under section 58 of the Residential Tenancy Act (the “Act”), this hearing dealt with the tenant’s April 9, 2023, application to the Residential Tenancy Branch for an order cancelling a notice to end tenancy for unpaid rent (the “Notice”), under section 46(4)(b) of the Act.

In addition, under section 58 of the Act, this hearing dealt with the landlord’s April 18, 2023, application to the Residential Tenancy Branch for:

- (i) an order of possession on the Notice under section 55(2)(b) of the Act;
- (ii) a monetary order for unpaid rent under section 67 of the Act; and
- (iii) authorization to recover the cost of the filing fee under section 72 of the Act.

The landlord attended the hearing. No one dialled in on behalf of the tenant during the hearing, which lasted from 9:30 A.M. to 9:49 A.M. The landlord testified under oath that the landlord served a *Notice of Dispute Resolution Proceeding* on the tenant by registered mail. There is proof of tracking information submitted into evidence. It is my finding that the tenant was served with the required notice in compliance with the Act.

Issues

1. Is the tenant entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession?
3. Is the landlord entitled to recover the cost of the filing fee?

Background and Evidence

In reaching this decision, I have considered all relevant evidence that complied with the *Rules of Procedure*. Only the necessary oral and documentary evidence that helped resolve the issues of the dispute and explain the decision is included below.

The tenancy began May 25, 2022. Rent is \$1,900.00 due on the first day of the month. The landlord currently retains a \$950.00 security deposit. There is a copy of the written tenancy agreement in evidence.

The landlord served the Notice on April 4, 2023 by registered mail. Page two of the Notice indicates that the tenant did not pay rent in the amount of \$1,900.00 that was due on April 1, 2023. All pages of the Notice were served and submitted into evidence.

The landlord affirmed that the tenant is currently \$2,600.00 in rental arrears.

Analysis

Section 26 of the Act requires tenants to pay rent the day it is due unless they have a legal right to withhold rent. Section 46(1) of the Act allows landlords to end a tenancy with a *10 Day Notice to End Tenancy for Unpaid Rent* on any day rent remains unpaid after the day rent is due.

The landlord's evidence shows that the tenant did not pay the rent on April 1, 2023. Therefore, I find on a balance of probabilities that the Notice was given for a valid reason. I also find that the Notice complies with the form and content requirements of section 52. As a result, the tenant's application to cancel the Notice is dismissed.

Based on the above findings, the landlord is granted an order of possession under section 55(1) of the Act. A copy of the order of possession is attached to this Decision and must be served on the tenant.

Since the landlord's application relates to a section 46 notice to end tenancy, the landlord is also entitled to an order for unpaid rent under section 55(1.1) of the Act. Therefore, the tenant is ordered to pay \$2,600.00 to the landlord.

Since the landlord was successful in its application, the landlord is entitled to \$100.00 to cover the cost of the filing fee under section 72 of the Act. In total, the landlord is awarded \$2,700.00.

Pursuant to sections 38 and 72 of the Act, the landlord is ordered to retain the \$950.00

security deposit as partial satisfaction of the payment order. A monetary order for the remaining amount of \$1,750.00 is attached to this Decision and must be served on the tenant.

Conclusion

The tenant's application is dismissed without leave to reapply.

The landlord's application is granted. The landlord is granted an order of possession and a monetary order in the amount of \$1,750.00.

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: May 30, 2023

Residential Tenancy Branch