



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, MNDCT, OLC, FFT
OPR-DR, MNR-DR, FFL

Introduction

Under section 58 of the Residential Tenancy Act (the “Act”), this hearing dealt with the tenant’s April 17, 2023, application to the Residential Tenancy Branch for:

- (i) an order cancelling the notice to end tenancy for unpaid rent (the “Notice”), under section 46(4)(b) of the Act;
- (ii) compensation for monetary loss or other money owed under section 67 of the Act;
- (iii) an order for the landlord to comply with the Act under section 62 of the Act; and
- (iv) authorization to recover the cost of the filing fee under section 72 of the Act.

In addition, under section 58 of the Act, this hearing dealt with the landlord’s April 26, 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.

Preliminary Issue – landlord did not receive tenant’s evidence

The landlord affirmed that the landlord was only served with the tenant’s application for dispute resolution but did not receive any of the tenant’s evidence.

The tenant affirmed that the tenant had served the landlord with the tenant’s evidence on April 17, 2023, or on April 20, 2023.

Under Rule 3.5 of the Rules of Procedure, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and the Rules of Procedure.

In addition, under Rule 3.14 of the Rules of Procedure, documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent not less than 14 days before the hearing.

Policy Guideline 12 further provides that the decision on whether to make an order that a document has been sufficiently served in accordance with the law is a decision for the arbitrator to make on the basis of all the evidence before them.

Taking into consideration all of the evidence before me, I find on a balance of probabilities that the tenant did not serve the landlord with the tenant's evidence. This is because (i) the landlord affirmed that the landlord did not receive any evidence from the tenant and only received the tenant's application for dispute resolution; (ii) the tenant did not submit any documentary evidence to support the tenant's assertion that the landlord was in fact served with the tenant's evidence; and (iii) the tenant's testimony regarding service was vague.

As the tenant failed to serve the landlord with the tenant's evidence, the tenant's evidence is excluded under Rule 3.14 of the Rules of Procedure.

Preliminary Issue - Unrelated Claims

Rules of Procedure 2.3 states that claims made in an application for dispute resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims.

It is my determination that the tenant's and landlord's claim regarding the Notice is not sufficiently related to the tenant's other claims to warrant that they be heard together. I exercise my discretion to dismiss the tenant's other claims with leave to reapply and will deal only with the Notice.

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 or tenant 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 December 1, 2021. Rent is \$1,150.00 due on the first day of the month. The landlord currently retains a \$575.00 security deposit and a \$575.00 pet damage deposit. There is a copy of the written tenancy agreement in evidence.

The landlord served the Notice on April 13, 2023, by registered mail. All pages of the Notice were served and submitted into evidence.

The landlord affirmed that:

- the tenant is currently \$18,500.50 in rental arrears.
- the tenant has not paid any rent since January 2022.

The tenant affirmed that:

- the tenant had paid rent up until April 31, 2022, via money orders.
- after April 31, 2022, the tenant stopped paying rent as there were issues in the apartment that the tenant wanted to be repaired.

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 is that:

- the tenant is currently \$18,500.50 in rental arrears.
- the tenant has not paid any rent since January 2022.

The tenant affirmed that:

- the tenant had paid rent up until April 31, 2022, via money orders.
- after April 31, 2022, the tenant stopped paying rent as there were issues in the apartment that the tenant wanted to be repaired.

In relation to the unpaid rent from January 2022 to April 31, 2022, a useful guide regarding conflicting testimony, and frequently used in cases such as this, is found in *Faryna v. Chorny* (1952), 2 D.L.R. 354 (B.C.C.A.), which states at pages 357-358:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanor of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those circumstances.

Taking into consideration all of the evidence before me, I find the landlord's submissions to be more reasonable because the tenant has not provided any documentary evidence to support the tenant's assertion that rent was paid up to April 31, 2022. A reasonable person in the tenant's position would provide receipts or other evidence of how each month's rent has been paid. Therefore, I find that the tenant did not pay rent up until April 31, 2022.

In relation to the unpaid rent accruing from May 1, 2022, onwards, the tenant's evidence was that the tenant stopped paying rent as there were issues in the apartment that the tenant wanted to be repaired. As this is not a valid reason to withhold rent, I find that the tenant also did not pay rent from May 1, 2022, to the present.

Based on the above, 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 \$18,500.50 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 \$18,600.50.

Since the tenant was not successful in its application, the tenant is not entitled to \$100.00 to cover the cost of the filing fee under section 72 of the Act

Pursuant to sections 38 and 72 of the Act, the landlord is ordered to retain the \$575.00 security deposit and \$575.00 pet damage deposit as partial satisfaction of the payment order. A monetary order for the remaining amount of \$17,450.50 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 awarded an order of possession and a monetary order in the amount of \$17,450.50.

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: June 10, 2023

Residential Tenancy Branch