



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

Tenant CNR, LRE, LAT, OLC, FFT
Landlord OPR-DR, MNR-DR, FFL

Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application is seeking orders as follows:

1. For an order of possession;
2. For a monetary order for unpaid rent; and
3. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on April 30, 2023, Return all or part of the security deposit;
2. To suspend or set conditions on the landlord's right to enter the rental unit;
3. To be allowed to change the locks; and
4. To recover the cost of the filing fee.

Both parties appeared, gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form, , and make submissions at the hearing.

At the outset of the hearing the parties agreed that the tenant informed the landlord on June 14, 2023, that they had vacated the rental unit. As the tenancy is legally over, I find I do not need to consider the tenant's application as they are related to the tenancy continuing. Therefore, I dismiss the tenant's application without leave to reapply.

However, I must still consider the section 55 of the Act as it states when a notice to end tenancy for non payment of rent is disputed by the tenant, and if the tenant's application

is dismissed. I must grant the landlord an order of possession and a monetary order for repayment of rent. The landlord was not required to file a separate application in such as case.

As the landlord does not require an order of possession, the only issue for me to consider is the repayment of rent.

Issue to be Decided

Is the landlord entitled to a monetary for unpaid rent?

Background and Evidence

The parties entered into a tenancy agreement on August 11, 2023. The tenant moved in early than the stated date of September 1, 2023. The tenant moved into the rental unit on August 29, 2023. Rent in the amount of \$2,850.00 was payable on the 29th of each month. A security deposit of \$1,425.00 was paid by the tenant.

The landlord testified that the tenant did not pay rent for May and June. Which was due on April 29, 2023, for May and due on May 29, 2023, for June. The landlord stated that the tenant had not intention to pay the rent. Filed in evidence are emails which supports the tenant was not going to pay the rent.

The tenant testified that they did not pay the rent to the landlord. The tenant stated they tried to send an e-transfer to the landlord, but it was declined.

The landlord responded that the tenant sent them an email wanted them to settle for amount lower than the rent and it was conditional that the landlord would withdraw their application, which they would not.

Analysis

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

In this case, I find the tenant failed to pay rent for May and June 2023. I find the tenant breached section 26 of the Act. The landlord has the right to reject an email transfer if the tenant wanted the landlord to settle for a lower rent owed by a mutual agreement.

Rent is due under the terms of the tenancy agreement. This means once that date has past the rent is already owed by the tenant to the landlord. The tenant did not vacate until June 14, 2023, and rent was already due and owing.

I find that the landlord is entitled to monetary order for the unpaid rent, pursuant to section 55(1.1) and 67 of the Act in the amount of **\$5,700.00**.

I find that the landlord has established a total monetary claim of **\$5,800.00** comprised of the above described amount and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$1,425.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$4,375.00**. 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 tenants.

Conclusion

The tenants' is dismissed. The landlord is entitled to a monetary order as outlined above.

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 23, 2023

Residential Tenancy Branch