



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR; OPR, MNRL, MNDL,

Introduction

This hearing was scheduled in response to the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to section 46.

This hearing was also scheduled in response to the landlord's application pursuant to the *Act* for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and damage to the rental unit pursuant to section 67.

The tenants and the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. As neither party raised any issues regarding service of the application or the evidence, I find that both parties were duly served with these documents in accordance with sections 88 and 89 of the *Act*.

Preliminary Issue – Sever

Rule 2.3 states that claims made in an application must be related to each other and that an Arbitrator has discretion to dismiss unrelated claims with or without leave to reapply. I advised both parties at the outset of the hearing that the central and most important issue for this hearing was whether this tenancy would end pursuant to the 10 Day Notice for nonpayment of rent. Accordingly I find the remaining portion of the landlord's application must be severed and must be dealt with separately through an application.

Issue(s) to be Decided

Are the tenants entitled to cancellation of the 10 Day Notice? If not, is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The landlord, who holds the mortgage to the property assumed this tenancy January 1, 2019, when the landlords who are named on the tenancy agreement (collectively “landlord H”), defaulted in their mortgage payments. The landlord explained that he had entered into a “rent to own” agreement with landlord H and when landlord H failed to make payments to him due to nonpayment of rent by the tenants, landlord H voluntarily surrendered the property back to him.

The landlord confirmed he received a copy of the tenancy agreement from landlord H and that he did not enter into a new tenancy agreement with the tenants in January 2019.

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on October 1, 2018 on a fixed term until October 1, 2019. Rent in the amount of \$800.00 is payable on the first of each month. The tenancy agreement allows the tenants to perform renovations and provide supplies in exchange for a \$500.00 rent reduction, provided receipts and photographs are submitted to the landlord by the last day of each month. The agreement stipulates that failure to submit receipts and photographs by the due date relinquishes the tenants’ right to the rent reduction and thereby obligates the tenants to pay full rent in the amount of \$800.00 on the first day of the following month.

During the hearing, the parties agreed that on an undisclosed date, the tenancy agreement was amended in writing, to allow the tenants to perform renovations and provide supplies in exchange for \$800.00 monthly rent.

The tenants confirmed receipt of the 10 Day Notice on January 8, 2019. This 10 Day Notice indicates rent in the amount of \$800.00 remains outstanding and states an effective move-out date of January 17, 2019.

The tenants contended that renovations totalling \$800.00 were made each month but acknowledged that receipts and photographs for December renovations were not submitted to either landlord, despite a “notice of lease violation” letter directing them to do so. The tenants confirmed that rent in the amount of \$800.00 was not paid on January 1, 2019.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for unpaid rent the tenant may, within five days, pay the overdue rent or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. The tenants filed the application within five days but failed to establish rent has been paid.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, whether or not the landlord complies with the *Act*, *Regulations* or tenancy agreement. Under the *Act*, the tenants were obligated to submit receipts and photographs by December 31, 2018 or pay rent in the amount of \$800.00 on January 1, 2019. As evidenced by the tenants’ own testimony, the tenants did neither.

Section 55 of the *Act* establishes that if a tenant makes an application for dispute resolution to dispute a landlord’s notice to end tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and the tenant’s application is dismissed or the landlord’s notice is upheld. Section 52 of the *Act* provides that a notice to end tenancy from a landlord must be in writing and must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

Based on the testimony of the parties and the notice before me, I find that the tenants were served with an effective notice. Accordingly I dismiss the tenants’ application to cancel the 10 Day Notice and find that the landlord is entitled to an order of possession, pursuant to section 55 of the *Act*.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. On the basis that the tenants did not submit receipts and photographs by December 31, 2018 or pay rent in the amount of \$800.00 on January 1, 2019, I find that the landlord is entitled to a monetary order in the amount of \$800.00.

Conclusion

The landlord's application for a monetary order for damage to the rental unit is dismissed with leave to reapply.

The tenants' application is dismissed without leave to reapply.

I grant an order of possession to the landlord effective **two (2) days after service on the tenant.**

I issue a monetary order in the landlord's favour in the amount of \$800.00 against the tenants.

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: February 22, 2019

Residential Tenancy Branch