



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, CNR, FF

Introduction

This was a cross-application hearing for Dispute Resolution under the *Residential Tenancy Act* (“the Act”).

On July 29, 2019, the Tenants applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 23. On August 7, 2019, the Tenants amended their application to include a dispute of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 2, 2019.

On July 30, 2019, the Landlord applied for an order of possession for the rental unit based on the issuance of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and for a monetary order for unpaid rent in the amount of \$8,000.00. On August 7, 2019, the Landlord amended their application to increase the amount of unpaid rent to \$20,000.

The matter was set for a conference call hearing. The Landlords agents (“the Landlord”) attended the hearing; however, the Tenants did not. The Landlords provided affirmed testimony that they served the Tenants with the Notice of Dispute Resolution Proceeding using registered mail sent to each Tenant on August 8, 2019. The Landlord provided the registered mail tracking information as proof of service and provide proof of service documents. I find that the Tenants were served with notice of the hearing in accordance with sections 89 and 90 of the Act. The Tenants are deemed served on August 13, 2019.

The Landlords were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenants failed to attend the hearing to proceed with their application to dispute the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 23, 2019 and the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 2, 2019. Since the Tenants failed to attend the hearing the Tenants application is dismissed without leave to reapply.

The hearing proceeded on the Landlords application for an order of possession for the rental unit and a monetary order for unpaid rent.

The Landlords requested at the hearing to include a claim to keep the security deposit of \$2000.00 and the pet damage deposit of \$2000.00 in partial satisfaction of the claim for unpaid rent.

Issues to be Decided

- Is the Landlord entitled to an order of possession for the rental unit?
- Is the Landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The Landlord testified that the tenancy began on May 1, 2014 as a three year fixed term tenancy that continued thereafter on a month to month basis. Rent in the amount of \$4,000.00 is due to be paid to the Landlord by the first day of the month. The Tenants paid the Landlord a security deposit of \$2,000.00 and a pet damage deposit of \$2,000.00. The Landlord provided a copy of the tenancy agreement.

The Landlord testified that the Tenants have failed to pay the rent when it was due under the tenancy agreement.

The Landlord testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 23, 2019, ("the July Notice"). The Landlord testified that the 10 Day Notice was served in person to the tenant. The Notice indicates the Tenants have failed to pay rent in the amount of \$8,000.00.

The Landlord testified that the Tenant was served with another 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 2, 2019, ("the August Notice"). The Landlord testified that the 10 Day Notice was served in person to the Tenant. The Notice indicates the Tenants have failed to pay rent in the amount of \$12,000.00.

The 10 Day Notices informed the Tenants that the Notice would be cancelled if the rent was paid within five days. The Notices also explain that the Tenants had five days to dispute the Notices.

The Landlord testified that the Tenants did not pay the rent due under the tenancy agreement within 5 days of receiving the 10 Day Notices.

The Landlord testified that the tenants owed the following amounts of rent:

June 2019	\$4,000.00
July 2019	\$4,000.00
August 2019	\$4,000.00
September 2019	\$4,000.00

The Landlords testified that they received the following rent payments from the Tenants:

August 23, 2019	\$4000.00
August 30, 2019	\$4000.00
September 24, 2019	\$2500.00

The Landlord testified that they issued the Tenants rent receipts for the payments and included that the payments are for use and occupancy only. The Landlord testified that rent in the amount of \$5,500.00 remains outstanding.

The Landlord is seeking an order of possession for the rental unit and a monetary order in the amount of \$5,500.00

Analysis

Section 26 of the Act states that a Tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the Act, the regulations, or the tenancy agreement, unless the Tenant has a right under this Act to deduct all or a portion of the rent.

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I find that the Tenants failed to pay the rent due under the tenancy agreement within five days of receiving the 10 Day Notice dated July 23, 2019.

I find that the Tenants did not have a legal right under the Act to withhold payment of the rent. I find that the Tenants have breached the Act and fundamentally breached the tenancy agreement. The tenancy is ending.

Under section 55 of the Act, when a Tenants Application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the 10 Day Notice complies with the requirements for form and content and I find that the Landlord is entitled to an order of possession effective 2 (two) days, after service on the Tenants. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

I find that the Tenants have failed to pay rent in the amount of \$5,500.00 that is due under the tenancy agreement.

I have granted the Landlords' request to amend the application to include a claim to keep the security deposit and pet damage deposit towards unpaid rent. I order that the Landlord may keep the deposits of \$4,000.00 towards their monetary award.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenants to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

The Landlord has established a monetary claim in the amount of \$5,600.00. After setting off the deposits of \$4,000.00 towards the award of \$5,600.00, I award the Landlord a monetary order for the balance of \$1,600.00.

Conclusion

The Tenants failed to pay the rent due under the tenancy agreement within five days of receiving a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 23,

2019, and did not have a legal right to withhold payment of the rent. The Tenants have fundamentally breached the tenancy agreement. The tenancy is ending.

The Landlord is granted an order of possession effective 2 days after service on the Tenant

After setting off the deposits of \$4,000.00 towards the award of \$5,600.00, I award the Landlord a monetary order for the balance of \$1,600.00.

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: September 26, 2019

Residential Tenancy Branch