



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlords: OPR-DR, MNRL, FFL
For the tenants: CNR

Introduction

The tenants filed an Application for Dispute Resolution (the “tenants Application”) on February 11, 2020 seeking an order to cancel the ‘10 Day Notice to End Tenancy for Unpaid Rent or Utilities’ (the “10 Day Notice”) issued by the landlords on February 5, 2020.

The landlords filed an Application for Dispute Resolution (the “landlords Application”), by Direct Request, on February 14, 2020. They subsequently filed an amendment to this on February 27, 2020. The landlords seek an order of possession for the rental unit, to recover the money for unpaid rent, and to recover the filing fee for the Application. The matter proceeded by way of a participatory hearing because the landlords’ Direct Request application cannot be considered by that method when there is a cross-application by the tenants in place.

The tenants stated that they delivered notice of this dispute hearing to the landlords via registered mail and provided copies of the Canada Post receipt and labels to show that transaction. They sent the notice and supporting documents on February 21, 2020. The tenants stated that they received a notice back from the post office asking for it to be re-sent. The landlords stated they received nothing in the post office, and could not explain what happened; however, they stated they were aware of the issues and evidence and were ready to proceed with the hearing directly. I checked their knowledge of the evidence and verified their understanding throughout the hearing.

The landlords stated they sent the landlords Application and evidence to the tenants via registered mail on February 29, 2020. They provided copies of Canada Post labels that

show two separate packages for each of the tenants. The tenants confirmed that they received the landlords Application and evidence package on March 3, 2020.

The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “*Act*”) on March 24, 2020. Both parties attended the conference call hearing. I explained the process and offered both parties the opportunity to ask questions. Both parties had the opportunity to present oral testimony and make oral submissions during the hearing.

Issue(s) to be Decided

Are the tenants entitled to an order to cancel the 10-Day Notice pursuant to section 46 of the *Act*?

If the tenants are unsuccessful in seeking to cancel the 10 Day Notice, are the landlords entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Are the landlords entitled to recover the filing fee for this Application pursuant to section 72 of the *Act*?

Background and Evidence

The landlords provided a copy of the residential tenancy agreement as part of the evidence they prepared for this hearing. On my summary of the terms of the agreement, both parties agreed on the content. Both parties signed the agreement on September 30, 2019. The tenancy started on August 1, 2019, and the indication on the agreement is that the term of the agreement “is for a fixed term ending on January 31, 2020.” The monthly rent was \$2,300.00 per month, payable on the first of each month. The tenants paid a security deposit of \$1,050.00 on September 1.

Both the landlords and the tenants signed extra notations in the agreement. These are that the tenancy ends on January 31, 2020, with this being the date on which the tenants “must vacate” for the “demo of house”. An extra page inserted, signed, states that January will not require the payment of rent.

The landlords provided a copy of the 10 Day Notice, signed on February 5, 2020. This was served by attaching a copy to the door of the rental unit. A 'Proof of Service' signed the same day bears a witness statement attesting to the posting of the 10 Day Notice. In the hearing, the tenants confirmed receipt of the same. The tenants testified in the hearing that they suggested the landlords issue this 10 Day Notice, in their dialogue on January 30, 2020.

The amount of rent listed on the 10 Day Notice is \$4,750.00. The landlord's worksheet shows this is \$150 for November 2019, and \$2300 for each of December 2019 and February 2020. In an amendment to the application, on February 27, 2020 the landlords added the month of March for a total claim of \$7,050.00.

The tenants' documentary evidence consists of the Application for Dispute Resolution they completed on February 11, 2020, a copy of the 10 Day Notice, Canada Post mailing information, and their Application to Waive Filing Fee.

The tenant provided that the landlords advised on February 4 that they will be serving a 10 Day Notice for unpaid rent. The landlords confirmed the tenants' testimony on this point, and then served the 10 Day Notice on February 5, 2020.

The tenants did not pay rent upon receiving the 10 Day Notice and claims the 10 Day Notice should be cancelled because the landlords refused to take rent.

Analysis

The tenants provided documents that were not sent to the landlords and did not explain the reason for this omission. On my review of the documents, as well as listing them in the hearing for both parties, I am satisfied that the landlords is not prejudiced by not having these documents at the hearing. I find there is no reason for the landlords to examine contents prior to making submissions thereof that impact their position in this dispute.

In the hearing the landlords and tenants both discussed the tenancy agreement as being for a fixed term. The reason for this agreement was for the demolition of the rental unit. This reason is not permissible by the *Residential Tenancy Regulation* section 13.1(2). The tenants provided their interpretation of these provisions of section 49(2)(b) of the *Act*, for a 4-month notice to end the tenancy, as well as the need for necessary provisions and permits being already in place.

In my analysis of this issue, I find the legality of a fixed term agreement in its essence is not relevant to the issue at hand, that of the landlords issuing a 10 Day Notice for unpaid rent. As such, the evidence and testimony on this issue receives no weight in my assessment of the key issue at hand and the reason for this hearing.

Section 46(1) of the *Act* states that a landlord may end a tenancy if the rent is unpaid on any day after the rent is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the tenants receive the notice.

Section 46(4) of the *Act* states that within 5 days of receiving a notice a tenant may pay the overdue rent, thereby cancelling the Notice, or dispute it by filing an Application for Dispute Resolution.

I find as fact that the tenants held occupancy of the unit beyond January and into February. At the time of the hearing, this had continued through to March 2020. By February 5, 2020, when the landlords issued the 10 Day Notice, the tenants had not paid rent for the month of February. Each parties' testimony agreed that the tenants did not pay for the following month of March.

On my review of the text message evidence, I note the tenants did not pay for the month of December, asking the landlords to defer that monetary amount through January incremental payments. At this point the tenants suggested to the landlords that there could be another tenancy agreement initiated if the situation were to evolve that the tenancy would continue. The tenants stated this on more than one message, in order to ask his co-tenants for payment again, effectively paying rent for the month of January.

By December 16, the tenants were proposing the landlords accept this payment scheme and suggested the landlords could serve a 10 Day Notice "and then it will drag out till February or March till an arbitration hearing is set." The tenants reiterated they would make the payments by the end of January, with January being the rent-free month as agreed upon by the parties at the start of the tenancy. The tenants stated that the payments would be made prior to the tentative move-out date of January 31.

I accept the evidence before me that the tenants failed to pay the February rent owed in full by February 10, 2020 within five days granted under the *Act*. For that reason, I find the reason the landlords served the 10 Day Notice is valid. The tenants are not

successful in seeking to cancel this 10 Day Notice; therefore, I dismiss the tenants' application.

The tenants claim the landlords refused to accept the payment of rent for February. Aside from dialogue via text messaging with the landlords, the tenants did not provide evidence on their attempts made at paying the rent or advising the landlords that they were doing so. Based on the testimony of the tenants, their statement to the landlords, at 3:24 p.m. on January 31, was that if there was going to be a Notice issued, the landlords should "tape it to the door."

I find that the tenants were obligated to pay \$2,300.00, as per the tenancy agreement. Section 26 of the *Act* requires a tenant to pay the rent when it is due under the tenancy agreement whether the landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has the right under the *Act* to deduct all or a portion of the rent. While the tenants indicated the dialogue with the landlords constitutes the landlords refusing to accept rent, there is no provision in the *Act* that would allow the tenants to unilaterally decide to withhold the payment of rent in full while still maintaining occupancy.

Based on both parties' testimony, and in consideration of the evidence presented by the landlords, I find the claim for the rental amount of February 2020 is valid, and the landlords shall receive compensation for that amount.

Also, the text messages reveal that the tenants did not pay rent for the month of December 2019, asking to defer that payment through to January 2020. By the end of January, the tenants had not paid that amount. Therefore, the landlords are also entitled to that month's rent amount.

Additionally, by the time of the hearing the tenants maintained occupancy and did not pay for the month of March. I add this amount of rent to the total compensation amount.

The amount remaining for November 2019 -- \$150.00 -- was not disputed by the tenants. I find the landlords is entitled to this amount of compensation as well.

The amount of rent listed on the 10 Day Notice is \$4,750.00. The landlords' worksheet shows this is \$150 for November 2019, and \$2300 for each of December 2019 and February 2020. In an amendment to the application, on February 27, 2020 the landlords added the month of March for a total claim of \$7,050.00.

The landlords shall receive compensation for the total amount claimed on their amended worksheet dated February 27, 2020. That amount is \$7,050.00

The *Act* section 72 grants me the authority to order the repayment of a fee for the Application. As the landlords was successful in their claim, I find they are entitled to recover the filing fee from the tenants.

Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the landlords a Monetary Order in the amount of \$7,150.00 for unpaid rent and a recovery of the filing fee for this hearing application. The landlords are provided with this Order in the above terms and the tenants must be served with **this Order** as soon as possible. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: April 17, 2020

Residential Tenancy Branch