



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDCT, RR, AAT, AS, LRE, OLC
OPR, MNRL-S, MNDCL-S

Introduction

This hearing convened as a result of cross applications. In the Tenants Application for Dispute Resolution, filed on September 6, 2020, the Tenants requested the following relief:

- an Order canceling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on September 3, 2020 (the “Notice”);
- an Order for monetary compensation from the Landlords;
- a rent reduction for repairs paid for by the Tenant, and/or services or facilities not provided;
- an Order for access to the rental unit;
- an Order permitting the Tenants to assign their tenancy;
- an Order restricting the Landlords’ right to enter the rental unit; and
- an Order that the Landlord comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, or the residential tenancy agreement.

In the Landlords’ Application for Dispute Resolution, filed on September 21, 2020, the Landlords requested an Order of Possession and monetary compensation based on the Notice and to recover the filing fee.

The hearing was conducted by teleconference at 11:00 a.m. on October 26, 2020. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the

Residential Tenancy Branch Rules of Procedure. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter—Matters to be Decided

Hearings before the Residential Tenancy Branch are governed by the *Residential Tenancy Branch Rules of Procedure*. At all times an Arbitrator is guided by *Rule 1.1* which provides that Arbitrators must ensure a fair, efficient and consistent process for resolving disputes for landlords and tenants.

Residential Tenancy Branch Rule of Procedure 2.3 provides that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Hearings before the Residential Tenancy Branch are scheduled on a priority basis. Time sensitive matters such as a tenant's request for emergency repairs or the validity of a notice to end tenancy are given priority over monetary claims.

It is my determination that the priority claim before me is the validity of the Notice. I also find that this claim is not sufficiently related to the Tenant's monetary claim; accordingly, I exercise my discretion and dismiss the Tenant's monetary claims with leave to reapply.

For reasons which will be further detailed, matters which relate to the continued tenancy are no longer relevant; accordingly, those claims are dismissed without leave to reapply.

Issues to be Decided

1. Should the Notice be cancelled?
2. In the event the Notice is upheld, are the Landlords entitled to an Order of Possession and monetary compensation from the Tenants based on the Notice?
3. Should either party recover the filing fee?

Background and Evidence

Residential Tenancy Branch Rules of Procedure—Rule 6.6 provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy. Consequently, even though the Tenants applied for dispute resolution and are the Applicants, the Landlords presented their evidence first.

A copy of the residential tenancy agreement was provided in evidence and which indicated that this month to month tenancy began July 1, 2020. Monthly rent is \$3,000.00 and the Tenants paid a security deposit of \$1,500.00.

The Landlord testified that aside from the first month's rent and the security deposit, the Tenants have failed to pay the monthly rent as required. Specifically, the Tenants failed to pay rent for August 2020, September 2020 and October 2020. As a Landlord was not able to issue a notice to end tenancy for rent in August due to the COVID-19 pandemic, the Landlord issued the Notice on September 3, 2020 indicating the sum of \$3,000.00 was owing for September only.

The Landlord's witness, S.M., testified that he personally served the 10 Day Notice on the Tenant, L.M., at 4:10 p.m. on September 3, 2020.

The Tenants did not pay the outstanding rent within five days of service of the Notice, however, they applied to dispute the Notice on September 6, 2020.

The Tenant, L.S., testified as follows.

L.S. alleged that her cousin and the Landlords entered into a verbal agreement for her cousin to take over the lease as of August 2020. L.S. stated that her cousin moved into the rental unit, but the Landlord refused to bring the paperwork for her signature.

L.S. alleged that on August 29, 2020 the Landlord broke into the suite, changed the locks and stole the Tenants' property. She also claimed that the Landlord came to the property and was drunk. The Tenant then called the police, who attended the rental unit and advised the Tenant to get a locksmith and to call 911 if the Landlord returned.

L.S. stated that she did not pay her September rent because of the Landlord's behaviour on August 29, 2020 and because she believed that her cousin had taken over the lease.

L.S. stated that she also did not pay her October rent because she was not able to work as the Landlord stole her cleaning supplies and power tools. L.S. also stated that she had no means of paying rent to the Landlords as they refused to answer her phone calls and did not provide an email address for electronic transfer.

In reply the Landlord denied breaking into the rental unit and removing the Tenants' items. He testified that the Tenants gave written notice that they were moving out of the rental unit as of August 30, 2020. The Landlord arrived at the rental unit and it was clear that the Tenants had vacated the rental unit as they left nothing but debris. The Landlord then changed the locks.

Analysis

The Landlords issued the Notice pursuant to Section 46 of the *Act* which provides as follows:

Landlord's notice: non-payment of rent

46 (1)A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2)A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(3)A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4)Within 5 days after receiving a notice under this section, the tenant may

(a)pay the overdue rent, in which case the notice has no effect, or

(b)dispute the notice by making an application for dispute resolution.

(5)If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

(6) If

(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

The evidence before me, and in particular, the testimony of L.S., indicates the Tenants were withholding rent as they were upset with the Landlords' behaviour on August 29, 2020, and as they believed the Landlord removed their personal property.

As discussed during the hearing the Tenants must pay rent when rent is due; this requirement is set forth in section 26 of the *Act* which reads as follows:

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this 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.

As also noted during the hearing, there are only four occasions when a tenant has the right to withhold rent:

1. When the Landlord accepts a security deposit over and above the allowable amount (section 19(2));
2. When the Landlord accepts rent over and above the allowable amount (section 43(5));
3. When an Arbitrator authorizes a Tenant to withhold rent (section 72(2)(a)); and,
4. When the Tenant makes emergency repairs under the circumstances prescribed in section 33 of the *Act*

In the case before me I find the Tenants had no such legal authority to withhold rent. I do not accept the Tenant's testimony that the Landlords refused her attempts to pay the

rent, or otherwise made it difficult to pay rent. It is the *Tenants'* obligation to pay rent, not the Landlords' responsibility to collect the rent. On balance, I find it more likely the Tenants had no intention of paying the rent after their initial payment in July of 2020. The Tenants gave no explanation as to why they did not pay the August rent. It is notable that at the time the Landlord attended the property on August 29, 2020 the Tenants had failed to pay their August 2020 rent as well. Based on the Tenant's testimony before me, I find the Tenants were withholding the September rent as they were angry at the Landlords for changing the locks.

I accept the Landlord's testimony that the Tenants gave written notice to end their tenancy. I also accept his testimony that when he attended the rental unit it was vacant save and except for some debris. As the Tenants had abandoned the rental unit, I find the Landlord acted reasonably in changing the locks.

I also do not accept the Tenant's testimony that her cousin was to take over the lease and that this somehow relieved the Tenant of her obligation to pay rent. The evidence before me indicates her cousin moved into the rental unit *with* the Tenants. As signatories to the residential tenancy agreement/contract, it is the Tenants named on the tenancy agreement who are jointly and severally responsible for paying the rent. At best the Tenants' cousin was an occupant without any rights or obligations under the *Act*.

I find that the Tenants failed to pay rent as required by the tenancy agreement and section 26 of the *Residential Tenancy Act* and had no legal authority to withhold rent. I therefore dismiss the Tenants' claim for an Order canceling the Notice.

I have reviewed the Notice and find that it complies with section 52 of the *Act*. As such, and pursuant to section 55 of the *Act*, I find that the Landlord is entitled to an Order of Possession effective **two (2) days** after service on the Tenants. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

As the Landlords have been successful, their request to recover the filing fee is granted.

I also find that the Landlords have established a total monetary claim of \$6,100.00 comprised of rent owing for September and October 2020 and the \$100.00 fee paid by the Landlords for this application. The Landlords are at liberty to reapply for monetary compensation for the August 2020 rent as well as any future loss of rent should the Tenants fail to vacate the rental home as ordered.

The Tenants are cautioned that any costs incurred by the Landlords to enforce the Order of Possession are recoverable from the Tenants.

Pursuant to sections 38 and 72 of the *Act*, I authorize the Landlords to retain the Tenants' security deposit of \$1,500.00 in partial satisfaction of the claim and I grant the Landlord an Order under section 67 for the balance due of **\$4,600.00**. This Order may be filed in the Provincial Court (Small Claims Division) and enforced as an order of that Court.

Conclusion

The Tenants' request for an Order canceling the Notice is dismissed without leave to reapply. The tenancy shall end in accordance with the Notice.

The Tenants' request for an Order for monetary compensation from the Landlords is dismissed with leave to reapply. Similarly, the Tenants' request for a rent reduction for repairs paid for by the Tenant, and/or services or facilities not provided is dismissed with leave to reapply.

As the tenancy is ending, the Tenants' request for an Order for access to the rental unit is dismissed without leave to reapply. As well, the Tenants' request for an Order permitting the Tenants to assign their tenancy is dismissed without leave to reapply. Finally, the Tenants' request for an Order restricting the Landlords' right to enter the rental unit and an Order that the Landlord comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, or the residential tenancy agreement are dismissed without leave to reapply.

The Landlords request for an Order of Possession and monetary compensation based on the Notice is granted.

The Landlords request to recover the filing fee is granted. The Landlord may retain the Tenants' security deposit towards the amounts awarded and is granted a Monetary Order for the **\$4,600.00** balance due.

The Landlords are at liberty to make a further Application for Dispute Resolution for recovery of the unpaid rent from August 2020 as well as any future loss of rent should the Tenants fail to vacate the rental unit.

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: October 27, 2020

Residential Tenancy Branch