



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, OPR, FF, CNR, OLC, MNDCT, RP, RR, LRE, PSF, MNRT,
DRI

Introduction

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

The landlord's application is seeking orders as follows:

1. For an order of possession;
2. For a monetary order for unpaid rent;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

The tenants' application is seeking orders as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice");
2. To have the landlord make repairs to the rental unit;
3. For a rent reduction for repair;
4. To have the landlord provide services or facilities;
5. To cancel a rent increase;
6. For a monetary order in the total amount of \$37,601.00;
7. To suspend or set conditions on the landlord's right to enter the rental unit or site;
and
8. To recover the cost of filing the application.

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

Preliminary and Procedural matters

Tenants' application

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant's request to set aside the Notice to End Tenancy and the tenant's application to recover the filing fee at these proceedings. The balance of the tenant's application is dismissed, with leave to re-apply.

The tenant was advised at the hearing that their monetary claim exceeds my authority under the Residential Tenancy as the maximum amount is \$35,000.00. The tenant can make that monetary claim in the Supreme Court or reduce that amount should they want to have the matter heard under the Residential Tenancy Act.

Background and Evidence

The tenancy began on December 1, 2019. Rent in the amount of \$4,240.74 was payable on the first of each month. A security deposit of \$2,120.37 was paid by the tenants.

The tenant testified that they received the Notice on October 13, 2020, for unpaid rent for September and October 2020, in the amount of \$8,481.48.

The tenant testified that they did not pay the rent owed or any subsequent rent since they received the Notice. The tenant stated they did not have the authority under the Act to withhold rent; however, they feel they are entitled to the return of all rent they have paid because the rental unit is uninhabitable.

Legal counsel for the landlord stated that the tenants have failed to pay rent for five months. The landlord seeks a monetary order for the unpaid rent from September 2020 up to and including January 2012 for the total amount of amount of \$21,203.70 and an order of possession.

Analysis

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

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

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.

...

How to end a tenancy is defined in Part 4 of the Act.

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].

...

(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.

Upon review of the Notice, I find the Notice is completed in accordance with the requirements of section 52 of the Act.

Under the legislation the tenants may dispute the Notice for specific reasons, such as they have proof that their rent was paid or that the tenants had the right under the Act to deduct all or a portion from their rent, such as an order from an Arbitrator.

Although the tenant filed an application for dispute resolution within the time limit permitted under the Act, I find the tenant's application had no merit as the tenant admitted rent was not paid within 5 days after receiving the Notice. The tenant also stated that they had no authority under the Act to withhold the rent. At no time does the tenant have the right to simply withhold rent, such in this case, the tenants have not paid any rent for five months because they feel they are entitled to do so. I find the tenants have breached section 26 of the Act and this has caused losses to the landlord. Therefore, I find the landlord is entitled to recover unpaid rent from September 2020 to January 2021 (five months) in the amount of \$21,203.70.

As the tenant failed to pay the rent, I find the Notice is valid and remains in full force and effect. Therefore, I dismiss the tenant's application. The tenant is not entitled to recover the filing fee.

As the tenant's application is dismissed, I find the landlord is entitled to an order of possession, pursuant to section 55 of the Act.

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **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 landlord is entitled to a monetary order in the total amount of **\$21,303.70**, comprised of the above amount for unpaid rent from September 2020 up to and including January 2021, and to recover the cost of the filing.

I order that the landlord retain the security deposit of **\$2,120.37** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$19,183.33**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

Conclusion

The tenant's application is dismissed. The landlord is granted an order of possession.

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: January 11, 2021

Residential Tenancy Branch