



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF RP, RR, CNR-MT, MNDCT, OLC, FFT

Introduction

This hearing was convened in response to applications by the landlords and the tenant.

The landlords' application is seeking orders as follows:

1. For an order of possession based unpaid rent;
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 tenant's application is seeking orders as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, issued on October 13, 2020;
2. For monetary compensation for loss or other money owed;
3. To have the landlord make repairs to the rental unit;
4. For a rent reduction; and
5. 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.

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.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to relevant facts and issues in this decision.

Issue to be Decided

Should the Notice be cancelled?

Are the landlords entitled to an order of possession?

Are the landlords entitled to a monetary order for unpaid rent?

Are the landlords entitled to keep the security deposit in partial satisfaction of the claim?

Background and Evidence

The landlord testified that the tenant was originally an occupant (roommate) of another tenant. However, the tenant under that written tenancy agreement vacated the premises.

The landlord testified that on August 1, 2019, a tenancy was created with the tenant. Rent in the amount of \$2,000.00 was payable on the 1st of the month. A security deposit was paid in the amount of \$1,000.00.

The tenant testified that they paid the landlord \$1,100.00 for a security deposit.

The landlord responded that this is not correct; however, they will agree to have \$1,100.00 deducted from their monetary claim to simplify matters.

The landlord testified that the tenant did not pay rent for September 2020 and October 2020, and the Notice was issued. The landlord stated that the tenant has not paid any rent now since August 2020, which 5 months are now due and owing. The landlord seeks to recover unpaid rent in the amount of \$10,000.00.

The tenant testified that they paid September 2020, in August 2020. Filed in evidence is a copy of the receipt. I note the tenant had not paid rent for August 2020, and the receipt is for August 2020, rent not September 2020.

The tenant testified that they did not pay rent for October 2020, as that was compensation the landlord was giving them. Filed in evidence are text messages

The landlord responded that they were trying to work with the tenant, and they offer the tenant compensation to be taken off the arrears for unpaid rent and utilities if they would vacate the premise. The landlord stated they tenant refused that offer and the compensation was not offered for October 2020, rent, only arrears.

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

In this case, I do not accept the tenant's evidence that the rent they paid in August 2020, was for September 2020, rent. The tenant did not pay rent for August 2020, and the receipt support this was for August 2020, rent, not September 2020. I find the tenant failed to pay rent for September 2020.

In this case, I am not satisfied that the parties came to an agreement regarding October 2020. The offer present by the landlord to the tenant was that the compensation would be applied to rent, and utilities arrears that had occurred before October 2020, rent was due; however, that offer does not to have appeared to be settled and in any event it was not for October 2020, rent. I find the tenant failed to pay rent for October 2020.

I find the Notice, is valid and remains in full force and effect. Therefore, I dismiss the tenant's application to cancel the Notice. As the tenant was not successful with their claim, I find the tenant is not entitled to recover the cost of the filing fee.

As the tenant has admitted they have not paid rent in five (5) months. I find that the landlords are entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

The tenant has not paid rent for September, October, November, December 2020, and January 2021. I find the tenant has breached section 26 of the Act and this has caused losses to the landlords. I find the landlords are entitled to recover unpaid rent in the total amount of **\$10,000.00**.

I find the landlord has established a total monetary claim of **\$10,100.00** comprised of unpaid rent and the cost of the filing fee.

I authorize the landlord to keep the security deposit of \$1,100.00, in partial satisfaction of the claim. I grant the landlords a formal order pursuant to section 67 of the balance due of **\$9,000.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant

Conclusion

The tenant's application is dismissed. The landlords are granted an order of possession. The landlords are authorized to keep the security deposit and are granted a monetary order for the balance due.

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 15, 2021

Residential Tenancy Branch