



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, FF

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, based on unpaid rent;
2. For a monetary order for unpaid rent; and
3. 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" issued on December 7, 2020.

Both parties appeared, gave 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.

Issues to be Decided

Should the Notice be cancelled?

Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The tenancy began on October 27, 2017. Rent in the amount of \$1,800.00 was payable on the first of each month. A security deposit of \$900.00 and a pet damage deposit of \$450.0 was paid by the tenants.

The tenant testified that they received the Notice on December 7, 2020 and the outstanding rent was not paid within the five days. The tenants stated they are have had difficulties paying the rent because of loss of employment due to the pandemic.

The landlord testified that rent for December 2020, was not paid within 5 days as required by the Act and seeks an order of possession.

The parties agreed that January 2021, rent was paid in full on January 31, 2021 and rent for February 2021 has not be paid.

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 tenants filed an application for dispute resolution within the time limit permitted under the Act, I find the tenants' application must be dismissed as the tenants admitted rent was not paid within 5 days after receiving the Notice and had no authority under the Act to withhold rent. Therefore, I must dismiss the tenants' application. I find the Notice is valid and remains in full force and effect.

As the tenants' 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.

As the rent for December 2020 and January 2021 has now been paid, I decline to award the landlord a monetary order. This does not stop the landlord from making a future application to recover owed rent under the repayment plan as that plan will no

longer be in effect after the tenancy has ended or any subsequent rent, such as February 2021, if not paid.

Since the landlord was successful, I find the landlord is entitled to recover the cost of the filing fee. I authorize the landlord to deduction \$100.00 from the tenants' security deposit to recover this amount.

Settlement at conclusion of hearing

1. The parties agreed that the landlord will not enforce the 2-day Order of Possession, if the tenants pay February 2021 rent of \$1,800.00 to the landlord no later than February 2, 2021;
2. Should the tenants pay the rent on the date agreed upon, they will be allowed to remain in the rental unit until February 28, 2020, as occupants, and the 2-day order of possession will be cancelled;
3. The tenants must vacate the premise on February 28, 2020; and
4. The landlord is granted an order of possession effective at 1:00pm on February 28, 2021.

Conclusion

The tenants' application is dismissed. The landlord is granted an order of possession and is authorized to keep \$100.00 from the security deposit to recover the cost of the filing fee.

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: February 01, 2021

Residential Tenancy Branch