



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes CNC, CNR, OPR, MNR

Introduction

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

The landlord's application filed on June 16, 2021, 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 tenant's application file on May 6, 2021, is seeking orders as follows:

1. To cancel a One Month Notice to End Tenancy for Cause 9 the "One Month Notice".

The tenant's application filed on May 10, 2021, is seeking orders as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") issued on May 6, 2021; and
2. To recover the cost of filing the application.

The tenant's application filed on June 13, 2021, is seeking orders as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "2nd Notice") issued on June 7, 2021; and
2. 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 make submissions at the hearing.

Preliminary and Procedural Issues

In this case, I have four separate applications for dispute resolution before me. Three are related to unpaid rent. I had determined at the hearing that I would consider the three applications that were related to unpaid rent first and if the tenants were successful in cancelling the Notice or the 2nd Notice, I would then consider the merits of the One Month Notice.

The tenant's agent was argumentative at the hearing and stated that they do not understand why I am dealing with the issue of unpaid rent, when they disputed the One Month Notice first, and that should be what is heard first.

The parties were informed at the hearing that it is up to the Arbitrator to determine how the hearing is to be conducted when multiple applications are filed, not the tenant's agent.

Issues to be Decided

Are the landlord's entitled to an order of possession?
Are the landlord's entitled to a monetary order for unpaid rent?
Should the Notice and the 2nd Notice be cancelled?
Should the One Month Notice be cancelled?

Background and Evidence

The tenancy began on September 18, 2020. Rent in the amount of \$1,980.00 was payable on the first of each month. A security deposit of \$990.00 was paid by the tenants.

The landlord's agent testified that the tenants failed to pay rent for May 2021 and were served with the Notice. The agent stated that the tenants had a credit on their account and that is the reason the Notice shows the lesser amount of \$1,952.00, rather than \$1,980.00.

The landlord's agent testified that the tenants failed to pay the outstanding rent and have failed to pay rent for June, July, August, and September 2021. The landlord seeks an order of possession and a monetary order for unpaid rent in the amount of \$9,872.00.

The tenant testified that they did not pay the outstanding rent and have not paid any rent since the Notice was issued. The tenant confirmed they have no authority under the Act to withhold the rent. The tenant stated that they withheld rent because the One Month Notice is not valid because they did not do anything illegal and were waiting for the outcome of the hearing.

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, cost of emergency repair, or to recover an illegal rent increase.

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 tenant admitted rent was not paid within 5 days after receiving the Notice. Simply because the tenants were disputing the One Month Notice this does not give the tenants the authority under the Act to withhold the rent.

At no time do the tenants have the right to simply withhold rent because they feel they are entitled to do so. Therefore, I find the Notice is valid and remains in full force and effect. I find the tenancy legally ended on May 19, 2021, the effective date in the Notice, and the tenants are overholding the premises. Therefore, I dismiss the tenant's application filed on May 10, 2021.

As the tenants were not successful with their application filed on May 10, 2021 the tenants are not entitled to recover the filing fee from the landlord.

As the tenants' application is dismissed, 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.

As the tenant has admitted they have not paid rent for May, June, July, August, and September 2021, I find the landlord is entitled to a monetary order, pursuant to section 55(1.1) of the Act for the unpaid rent in the total amount of **\$9,872.00**.

I find that the landlords have established a total monetary claim of **\$9,972.00** comprised of the above-described amount and the \$100.00 fee paid for their application.

I order that the landlords retain the security deposit of **\$990.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$8,982.00**. 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.

As I have ended the tenancy for unpaid rent based on the Notice. I find I do not need to consider the merits of the 2nd Notice or the One Month Notice. Therefore, I dismiss these applications.

Conclusion

The tenant's applications are dismissed. The landlord is granted an order of possession and a monetary order for unpaid rent.

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: September 13, 2021

Corrected on September 15, 2021

Residential Tenancy Branch