



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **CNR, FFT, CNC, LRE, OPR-DR, MNR-DR, FFL**

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties pursuant to the Residential Tenancy Act (the "Act") for Orders as follows:

The tenants applied as follows:

- For cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent dated December 11, 2022 ("10 Day Notice 1") pursuant to section 46 of the Act
- For cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent dated January 3, 2023 ("10 Day Notice 2") pursuant to section 46 of the Act
- For cancellation of the landlord's One Month Notice to End Tenancy for Cause ("One Month Notice") pursuant to section 47 of the Act
- For an order suspending or setting conditions on the landlord's right to enter to the rental property pursuant to section 70 of the Act
- For reimbursement of the filing fee pursuant to section 72 of the Act

The landlord applied as follows:

- For a monetary order for unpaid rent pursuant to section 67 of the Act
- For an order of possession pursuant to section 55 of the Act
- For reimbursement of the filing fee pursuant to section 72 of the Act

Landlord RP appeared and tenants AK and RK appeared. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The parties confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

The tenant confirmed receipt of both 10 Day Notices and the One Month Notice. Pursuant to section 88 of the Act the tenant is found to have been served with all notices in accordance with the Act.

The landlords testified that they only received the tenants' dispute notices and not their evidentiary materials. I find the landlords properly served with the dispute notices pursuant to section 89 of the Act. The tenants similarly testified that they only received the landlords' dispute notice. I find the tenants were properly served with the landlord's dispute notice based on section 89 of the Act.

Preliminary Issue

The landlord advised that there is an additional landlord on the tenancy agreement. Based on section 64(3)(c) of the Act the application is amended to add the additional landlord.

The parties agreed that the tenants ended the tenancy on March 21, 2023. Therefore, the tenants' applications are dismissed in their entirety as is the landlords' application for an order of possession.

Issue(s) to be Decided

1. Are the landlords entitled to a monetary order for compensation for unpaid rent?
2. Are the landlords entitled to a reimbursement for their filing fees?

Background and Evidence

The tenancy commenced on January 31, 2022 on a month to month basis. Rent is \$1,750.00 per month due on the last day of the month. The landlords still hold a security deposit of \$875.00 in trust for the tenants. The tenancy ended March 21, 2023.

The parties agree that the last rent payment made by the tenants was October 31, 2022. The tenants owe rent for November and December 2022, and January, February and March 2023. The parties agree that the total amount of rent owing is \$8,750.00.

Analysis

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. As noted in Policy Guideline #16, in order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlords to prove their entitlement to a claim for a monetary award.

There is no dispute that the tenants withheld rent from the landlord. There are only six reasons that the tenants can lawfully withhold rent under the Act:

1. The security deposit taken was more than one half of the monthly rent pursuant to section 19
2. The tenants received a notice to end tenancy pursuant to section 49
3. An arbitrator previously issued an order allowing the tenants to withhold rent pursuant to section 65
4. The landlord consented to the tenants withholding rent
5. The tenant paid for emergency repairs to the rental unit pursuant to section 33
6. There was an unlawful rent increase pursuant to section 43

The tenants testified that none of the reasons listed were reasons why they withheld rent.

Based on undisputed evidence of the parties, I find that that landlords have satisfied their onus to prove that the tenants failed to pay rent in the amount of \$8,750.00 from October 2022 through March 2023.

The landlords' application for compensation is granted. As the landlords were successful in their application, they are also entitled to recover the \$100.00 filing fee.

Conclusion

The landlords are granted a monetary order as follows:

Claim	Amount
Unpaid rent	\$8,750.00
Filing fee	\$100.00
Security deposit	(\$875.00)
Total:	\$7,975.00

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: April 25, 2023

Residential Tenancy Branch