



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, OPR, MNR, FF

Introduction

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

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 (Notice) issued on March 23, 2023; and
2. For monetary compensation for loss or other money owed.

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.

In this case, AM was listed as a tenant on the tenant's application. AM is not listed as a tenant on the tenancy agreement. AM asserted that they are a tenant. The landlord stated if the AM wants to be recognized as a tenant they have no issues with that.

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. 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 tenants' request to set aside the Notice. The balance of the tenants' 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?
- Is the landlord entitled to an order of possession?
- Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The tenancy began on January 1, 2016. Rent in the amount of \$997.51 was payable on the 5th of each month. A security deposit of \$470.00 was paid by the tenants.

The tenants testified that they received the Notice on March 24, 2023. The tenant stated that rent was not paid in full within 5 days. The tenant stated they withheld rent because their have been heating issues for 7 years, and there are other issues with the rental unit.

The tenant acknowledged they have not paid rent for March, April and May 2023.

The landlord testified that the tenants rent for March 2023, was not withheld, it was returned for insufficient funds and the tenants have not paid any subsequent rent. The landlord stated that they believe the tenants made up the claim for heating in attempt to avoid the Act.

Analysis

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

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

Section 26 of the Act requires tenants to pay rent on time, even if the landlord breached the Act, unless they have a legal right to withhold rent under the Act. Section 46 says when rent is unpaid the landlord can end the tenancy by giving a 10-day notice on any day after rent is due. The tenant can only cancel the notice if they prove rent was paid or if they had the authority under the Act. 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 tenants' application must be dismissed as the tenant admitted rent was not paid within 5 days after receiving the Notice because they believed the landlord has breached the Act by not providing adequate heating for 7 years or making repairs. This is not grounds under the Act to withhold rent.

I find the tenant did not have the authority under the Act to deduct any portion from the rent. At no time does the tenant have the right to simply withhold rent because they feel they are entitled to do so. I find the tenants breached the Act, when they failed to pay rent for March, April, and May 2023. I find the Notice is valid. I find the tenants owe the landlord **\$2,992.53**. Therefore, I dismiss the tenants' application without leave to reapply. The tenants are not entitled to recover the cost of the filing fee.

As the tenant's application is dismissed, I find the landlord is entitled to an order of possession and a monetary order for repayment of unpaid rent, pursuant to section 55 of the Act.

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 the tenant owes the landlord **\$3,092.53** comprised of unpaid rent and the \$100.00 to recover the cost of the filing fee.

I order that the landlord to retain the security deposit of \$470.00 and interest of \$3.84 in partial satisfaction of the claim and I grant the landlords an order pursuant to section 67 of the Act, for the balance due of **\$2,618.69**. 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 tenant.

Conclusion

The tenants' application is dismissed. The landlord is granted an order of possession and monetary order as stated above.

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: June 02, 2023

Residential Tenancy Branch