



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This hearing was convened under the *Residential Tenancy Act* (The “Act”) in response to cross applications from the parties.

The Tenants filed their application on August 4th, 2023, and seek the following:

- Cancellation of the Landlord’s 10 Day Notice for Unpaid Rent (the “Notice”).
- An order to the Landlord to comply with the *Act*, *Regulation* or Tenancy Agreement.

The Landlord filed their application on August 16th, 2023, and seeks the following:

- An order of possession pursuant to the Notice.
- A monetary order for unpaid rent.
- Authorization to recover their filing fee from the Tenants.

The Landlord acknowledged being served with the Tenants’ application, but not with any of their evidence. The Tenants were not at the hearing to provide testimony regarding service. Accordingly, I have not considered any of the Tenants’ evidence in my decision due to a lack of service to the Landlord in accordance with the *Act*.

The Landlord’s agent N.V. testified that they served the Tenants, individually, by registered mail, at the Rental Unit, with both their application and evidence, on August 23rd, 2023. In accordance with section 90 of the *Act*, I deem the Landlord’s application and evidence served to the Tenants on August 28th, 2023.

Background and Evidence

The Landlord testified that the tenancy began on July 7th, 2023, pursuant to a written tenancy agreement, signed by the parties on July 7th, 2023 (the “Agreement”). Pursuant to the Agreement, monthly rent of \$1,690.00 is due on the first day of every month. The Landlord acknowledged that the Tenants have paid \$845.00 in damage deposit and \$150.00 in “key deposit”.

The Landlord and their agent N.V. testified that the Tenants have paid the following amounts to date:

Type	Period	Amount	Balance Owed
Rent	August	\$450.00	\$1,240.00
Rent	September	\$450.00	\$1,240.00
Rent	October	\$450.00	\$1,240.00
Total			\$3,720.00

In their application, the Tenants have stated that they paid \$2,880.00 to the Landlord, on July 7th, 2023, which sum comprised of July's \$1,690.00 rent, a security deposit of \$845.00, a key deposit of \$150.00 and \$195.00 towards August rent. They further acknowledge that they have not paid their August 2023 rent in full because of employment hardships.

The Landlord, and their agent N.V., refuted the Tenants' statements in their application and testified that on July 7th, 2023, the Tenants only paid \$1,880.00 to the Landlord, for which they were issued a receipt (the "Receipt"). I asked the Landlord to read the contents of the Receipt to me as it was not submitted as evidence. The Landlord testified that the Receipt number is 947635, it states the address of the Rental Unit, it is dated July 7th, 2023, and it is for an amount of \$1,880.00. The Landlord further testified that in the memo section of the Receipt it is written that the Receipt is for July 2023's rent, a \$40.00 water charge and 2 keys for \$150.00. The Landlord testified that no other receipts have been given to the Tenants.

The Landlord served the Tenants with the Notice on August 4th, 2023, by attaching the Notice to the Rental Unit's door. In their Application, the Tenants have stated that they were served with the Notice on August 4th, 2023.

Analysis

I accept the affirmed testimonies of the Landlord and N.V. that the Tenants have failed to pay \$3,720.00 in rent to the Landlord.

Section 26 of the *Act* states that a tenant must pay rent to the landlord, regardless of whether the landlord complies with the Act, regulations, or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the *Act*. The Tenants have not produced a valid reason for withholding rent.

Section 46 of the *Act* states that a landlord may issue a 10 Day Notice to End a Tenancy if rent remains unpaid after the day rent is due. I find that the Notice complies

with the form and content requirements of section 52 of the *Act* because: it gives valid grounds for issuing the Notice and has been completed correctly.

The Tenant's application to cancel the Notice is dismissed and, pursuant to section 55 of the *Act*, the Landlord is entitled to an Order of Possession, effective two (2) days after the service of the attached Order to the Tenants.

The Landlord is entitled to a Monetary Order for \$3,720.00 in unpaid rent in accordance with section 55 of the *Act*. The Landlord is further ordered to retain the Tenant's \$995.00 security deposit and "key deposit", along with accrued interest, in the amount of \$5.21 (calculated from July 7th, 2023, to October 12th, 2023), in partial satisfaction of the Monetary Order. The Landlord is reminded of their obligation to follow the *Act* and *Regulations*, which states that a landlord is only entitled to collect ½ month's security deposit.

The Tenants' application for the Landlord to comply with the *Act* is also dismissed, because the tenancy is ending and because the Tenants have failed to provide a valid ground for this order.

As the Landlord was successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application under section 72 of the *Act*.

Conclusion

The Tenants' application is dismissed, without leave to reapply. The Landlord is granted an Order of Possession, effective two (2) days after service of the attached Order to the Tenants. The Landlord is granted a monetary under the terms set out below:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent and for damages incurred.	\$3,720.00
Less security deposit and accrued interest.	\$1,000.21
Total Amount	\$2,719.79

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: October 12, 2023

Residential Tenancy Branch