



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 7, 2023, and seek the following:

- Cancellation of the Landlord’s 10 Day Notice for Unpaid Rent (the Notice).
- Authorization to recover their filing fee from the Landlord.

The Landlord filed their application on August 15, 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.

Both parties acknowledged being served with their counterparty’s application and evidence by registered mail, in accordance with the *Act*.

Background and Evidence

The parties agreed that the Tenants first moved into the Rental Unit in or about 2014, but they signed a new tenancy agreement on March 1, 2020 (the Agreement), pursuant to which the current rent is \$2,481.00 per month, due on the first day of every month. The Landlord is currently holding \$900.00 in security damage deposit for the Tenants.

The Tenants failed to pay their August 1, 2023, rent on time, which prompted the Landlord to serve the Notice to the Tenants on August 2, 2023. The Tenants acknowledged service of the Notice. The parties agreed that the Tenants subsequently paid their August rent in full on August 29, 2023. The Tenants did not pay their September 1, 2023, rent in full until September 29, 2023. At the time of the hearing, the Tenants’ October rent remained outstanding.

Tenant A.S. testified that they will not be able to pay their October rent until October 27, 2023; and they will not be able to pay their November 1, 2023, rent until November 10, 2023. The reason provided by the tenant A.S. was hardship caused by loss of

employment, as well as incorrect garnishment of the tenant A.S.' salary by the Canada Revenue Agency, which has been resolved.

The Landlord is seeking to enforce their Notice and agreed to a possession date of October 31, 2023.

Analysis

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 Tenant agrees that they owe rent but requested leniency due to hardship. Under the *Act*, hardship is not a valid reason to not pay rent, nor do I, as arbitrator, have jurisdiction to grant leniency for loss of employment.

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. Based on the undisputed testimony of the parties, I find that the Tenants have failed to pay August's monthly rent when it was due. As such, the Landlord had a valid reason to issue the Notice. Section 46(4) of the *Act* allows a tenant to cancel a notice by paying the outstanding rent within five days of receiving the Notice. The Tenants did not do this.

I have reviewed the Notice and find that it complies with the form and content requirements of section 52 of the *Act*.

For these reasons, I find that the Notice is valid. I dismiss the Tenants' application to cancel the Notice, without leave to reapply. As such, per section 55 of the *Act*, I grant the Landlord an order of possession effective October 31, 2023.

Monetary Order

The parties agree that the Tenants have not yet paid the October 2023 rent, but paid August and September 2023 rent (albeit late). The Tenants are therefore \$2,481 in rental arrears. The Landlord is entitled to a Monetary Order for \$2,481.00 in unpaid rent in accordance with section 67 of the *Act*.

The Landlord is further ordered to retain the Tenant's \$900.00 security deposit, along with accrued interest, in the amount of \$13.74 (calculated from March 1, 2020, to October 12, 2023), in partial satisfaction of the Monetary 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 October 31, 2023, 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.	\$2,481.00
Less security deposit and accrued interest.	\$913.74
Filing fee.	\$100.00
Total Amount	\$1,667.26

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