

DECISION

Issue Codes: CNR, MNDCT, OLC
OPU, OPM, MNRL-S, FFL

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) against Landlord Agent WL for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) under sections 46 and 55 of the Act
- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act

In addition, this hearing dealt with the landlord's Application for Dispute Resolution under the Act against the tenants for:

- an Order of Possession based on the Notice under sections 46 and 55 of the Act
- an Order of Possession based on a mutual agreement to end the tenancy under sections 44 and 55 of the Act
- a Monetary Order for unpaid rent under section 67 of the Act
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act
- authorization to recover the filing fee for this application under section 72 of the Act

Preliminary Issue – Amendment to the landlord named in the tenants’ application

The tenants' application was filed against Landlord Agent WL. During the hearing, however, it became apparent that the actual landlord was KHI, who was listed as the landlord under the landlord's application. Therefore, I order the tenants' application to be amended by replacing the respondent from Landlord Agent WL to KHI. I make this order as KHI is already a party to this dispute. Therefore, KHI will not suffer any prejudice by being named in the tenants' application.

Preliminary Issue - Unrelated claims

Rules of Procedure 2.3 states that claims made in an application for dispute resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims.

It is my determination that the parties' claims regarding the Notice is not sufficiently related to the parties' other claims to warrant that they be heard together. I exercise my discretion to dismiss the parties' other claims with leave to reapply and will deal only with the Notice (and the filing fee).

Issues

1. Are the tenants entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession?
3. Is the landlord entitled to recover the cost of the filing fee?

Background and Evidence

In reaching this decision, I have considered all relevant evidence that complied with the *Rules of Procedure*. Only the necessary oral and documentary evidence that helped resolve the issues of the dispute and explain the decision is included below.

The tenancy began May 5, 2018. Rent is \$1,550.00 due on the first day of the month. The landlord currently retains a \$775.00 security deposit. There is a copy of the written tenancy agreement in evidence.

The landlord served the Notice on July 13, 2023, by registered mail, which the tenants acknowledged receipt of. The Notice indicates that the tenants did not pay rent in the amount of \$10,850.00 that was due on July 1, 2023. All pages of the Notice were

served and submitted into evidence. The effective date of the Notice was July 28, 2023. The tenants disputed the Notice on July 31, 2023.

The landlord's agent affirmed that:

- the last time they received rent was in December 2022.
- beginning January 2023, they have not received any rent from the tenants. The tenants are currently \$13,950.00 in rental arrears.
- the tenants are also \$734.02 in arrears for utilities, which started accruing in April 2023.

The tenants affirmed that:

- they disputed the Notice on July 31, 2023.
- they agree they need to pay the utilities fee of \$734.02.
- they have not paid rent since December 2022 because:
 - they had an agreement with the landlord where the tenants would not have to pay rent until they move out.
 - they believe the landlord owes them money as there were numerous repair issues that were not addressed during the tenancy.

In response, the landlord's agent affirmed that:

- they told the tenants if they move out of the rental unit by April 1, 2023, they will not have to pay back the missing rent. The agreement to allow the tenants to withhold rent was predicated on the tenant vacating the rental unit by April 1, 2023, which did not happen. The landlord submitted as evidence a series of text messages, which confirms this exchange.

Analysis

Section 26 of the Act requires tenants to pay rent the day it is due unless they have a legal right to withhold rent. Section 46(1) of the Act allows landlords to end a tenancy with a *10 Day Notice to End Tenancy for Unpaid Rent* on any day rent remains unpaid after the day rent is due.

When a *10 Day Notice to End Tenancy for Unpaid Rent* is received by a tenant, that tenant must, within 5 days, either pay the overdue rent or dispute the notice with the Residential Tenancy Branch. If the tenant fails to do so, the tenant is conclusively presumed to accept that the tenancy is ending and must move out of the rental unit by the effective date of the relevant notice.

Under section 66 of the Act, the director may extend a time limit established by the Act only in exceptional circumstances. However, Policy Guideline 36 (*Extending a Time Period*), provides that an arbitrator may *not* extend the time limit to apply for arbitration to dispute a Notice to End Tenancy, if that application for arbitration was filed after the effective date of the Notice to End Tenancy. In other words, once the effective date of the Notice to End Tenancy has passed, there can be no extension of time to file for arbitration.

In the present case, the tenants are deemed to have received the Notice on July 18, 2023. The tenants, however, only disputed the Notice on July 31, 2023, which is past the effective date of the Notice (the effective date of the Notice was July 28, 2023). Accordingly, I find that the tenants are conclusively presumed to have accepted the end of the tenancy. Therefore, I grant the landlord an order of possession. A copy of the order of possession is issued with this Decision to the landlord. The landlord must serve a copy of the order of possession upon the tenants.

Since the application relates to a section 46 notice to end tenancy, the landlord is entitled to an order for unpaid rent under section 55 of the Act. In relation to the unpaid rent, the landlord's evidence was that the tenants are currently \$13,950.00 in rental arrears, representing unpaid rent from January 2023 to the present. The tenants' evidence was that they have not paid rent since December 2022 because (i) they had an agreement with the landlord where the tenants would not have to pay rent until they move out; and (ii) they believe the landlord owes them money as there were numerous repair issues that were not addressed during the tenancy.

The landlord has provided documentary evidence to show that the agreement to allow the tenants to withhold rent was predicated on the tenant vacating the rental unit by April 1, 2023, which did not happen (as the tenants are still occupying the rental unit). Therefore, I find that the tenants were *not* entitled to withhold rent based on this agreement. In addition, I find that the tenants did not provide any other valid reason for withholding rent under the Act. Therefore, the tenants are ordered to pay \$13,950.00 in unpaid rent to the landlord.

In relation to the utilities, since the tenants agreed they need to pay the utilities fee of \$734.02, the tenants are ordered to pay \$734.02 in unpaid utilities to the landlord.

Since the landlord was successful in its application, the landlord's application to recover the cost of the \$100.00 filing fee under section 72 of the Act is granted. In total, the landlord is awarded \$14,784.02.

Pursuant to sections 38 and 72 of the Act, the landlord is ordered to retain the \$775.00 security deposit as partial satisfaction of the payment order. A monetary order for the remaining amount of \$14,009.02 is attached to this Decision and must be served on the tenants.

Conclusion

The tenants' application is dismissed without leave to reapply.

The landlord's application is granted. I grant the landlord an order of possession and a monetary order in the amount of \$14,009.02.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: October 5, 2023

Residential Tenancy Branch