



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, CNL, MNDCT, LRE, OLC, FFT, OPL, MNDCL, FFL

Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (Act).

The Tenants' application:

- To cancel a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice),
- To cancel a Two Month Notice to End Tenancy for Landlord's Use of Property (the Two Month Notice),
- For a monetary order of \$1,593.54,
- To suspend or set conditions on the Landlords' right to enter the rental unit,
- For the Landlords to comply with the Act, regulation or tenancy agreement,
- For Reimbursement of the filing fee.

And the Landlords' application for:

- An order of possession,
- A monetary order of \$4,585.00,
- Reimbursement of the filing fee.

As both parties confirmed service of the Proceeding Package and documentary evidence, I find both parties were served with the required materials in accordance with the Act.

Both parties testified that the Tenants vacated the rental unit on August 12, 2023. Tenant KB testified that they vacated the rental unit based on the Two Month Notice. The Tenants withdrew all claims, with the exception of the monetary claim and reimbursement of the filing fee. As such, all other claims on the Tenants' application are dismissed without leave to reapply.

The Landlord stated they do not require an order of possession as the Tenants already vacated the rental unit. The Landlord stated they are only seeking a monetary order and reimbursement of the filing fee. The details of the Landlord's monetary claim are based on projected scenarios, thereby, they are premature claims that lack clarity with respect to the compensation sought by the Landlord. During the hearing, the Landlord proceeded to clarify their monetary claim as per their amended application. Although I proceeded to hear the Landlord's testimony, it was determined the Landlord did not serve their amended application to the Tenants within the required period of not less than 14 days before the hearing, as per Residential Tenancy Branch (RTB) *Rule of Procedure* 4.6. As such, as per section 59 of the Act, I dismiss the Landlords' application with leave to reapply.

Issue(s) to be Decided

- Are the Tenants entitled to Monetary Order?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

The parties agree the tenancy began on February 1, 2020, with monthly rent of \$2,600.00 due on the first day of each month. The Tenants paid a security deposit in the amount of \$1,300.00. The move out inspection occurred on August 13, 2023 and the security deposit plus interest was returned to the Tenants on August 26, 2023.

On June 27, 2023, the Landlords served a Two Month Notice. The Two Month Notice is dated and signed, with an effective date of August 31, 2023. The Two Month Notice indicates the Landlord is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

Advocate JB for the Tenants stated that the tenancy ended as per the Two Month Notice, which entitles the Tenants to compensation of one month's rent. On August 1, 2023, the Tenants withheld rent on this basis. The Tenants advised the Landlord of their decision to withhold rent via letter they sent to the Landlords. The Tenants filed this letter as part of their documentary evidence.

Advocate JB stated that on August 2, 2023 the Landlords served the 10-Day Notice to the Tenants for failure to pay rent in the amount of \$2,600.00 due on August 1, 2023. JB stated that upon receiving the 10 Day Notice the Tenants paid rent in full for August

2023. On August 2, 2023, the Tenants gave 10 days notice for early end to the tenancy, and the Tenants vacated the rental unit on August 12, 2023. The Tenants are seeking compensation for 19 days of rent, as they did not occupy the rental unit past August 12, 2023.

The Landlord stated that the tenancy did not end pursuant to the Two Month Notice given the Tenants disputed the matter. RR stated that the Landlords communicated this to the Tenants and asked them to pay rent for August 2023. RR stated the Landlords communicated this to the Tenants by sending emails on July 30, 2023 and August 1, 2023. The Landlords filed the email communication as part of their documentary evidence.

Analysis

Section 46 of the Act states that upon receipt of a 10 Day Notice, the tenant must, within five days, either pay the full amount of the arrears as indicated on the 10 Day Notice or dispute the 10 Day Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenants do not pay the arrears or dispute the 10 Day Notice they are conclusively presumed to have accepted the end of the tenancy under section 46(5).

I find that the 10 Day Notice was duly served to the Tenants on August 2, 2023, and that the Tenants had until August 7, 2023, to dispute the 10 Day Notice or to pay the full amount of the arrears. As the Tenants paid the full amount of arrears within the five-day period, I find the 10 Day Notice is cancelled and of no force of effect.

Section 50(1) of the Act states if a landlord gives a notice to end a periodic tenancy under section 49, the tenant may end the tenancy early by giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice and pay the landlord, on the date the notice is given, the proportion of rent due to the effective date of the tenant's notice. Section 50(3) states a notice under this section does not affect the tenant's right to compensation under section 51.

Section 51(1) of the Act states that a tenant who receives a notice to end a tenancy under Section 49 is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

I find the Two Month Notice was served first with an effective date of August 31, 2023, Thereafter, the Tenants provided 10 day notice for early end of tenancy on August 2,

2023 and vacated the rental unit by August 12, 2023. As such, I find the Tenants are only liable for the proportion of rent due to the effective date of their notice to end the tenancy. As the Tenant's paid full rent for the month of August 2023, I find they are entitled to a monetary award of \$1,593.53 (compensation for 19 days of rent from August 13 to August 31, 2023).

Further, based on the above, I find the tenancy did not end by the 10 Day Notice and did end pursuant to the Two Month Notice served by the Landlord and eventually accepted by the Tenant, hence the required compensation granted. As the Tenants' right to compensation under section 51 is not affected, I find the Tenants are entitled to a monetary award of \$2,600.00 (compensation for one month's rent).

Conclusion

I grant the Tenants a Monetary Order in the amount of **\$4,293.53** under the following terms:

Compensation for 19 days of rent, August 13 to August 31, 2023.	\$1,593.53
Compensation for one month's rent	\$2,600.00
Filing Fee	\$100.00
Total Monetary Award	\$4,293.53

The Tenants are provided with this Order in the above terms and the Landlords must be served with **this Order** as soon as possible. Should the Landlords fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 18, 2023

Residential Tenancy Branch