



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **CNR, MNDCT, RP, PSF, LRE, OLC, OPR-DR, MNR-DR, FFL**

Introduction

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

The tenants application is seeking orders as follows:

- To cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice");
- For a Monetary Order for compensation of a monetary loss or other money owed;
- For an Order for repairs to the unit, site or property;
- For an Order to provide services or facilities required by the tenancy agreement or law;
- For an Order to suspend or set conditions on the landlord's right to enter the rental unit or site; and
- For an Order for the landlord to comply with the Act, regulation and/or tenancy agreement.

The landlord's application is seeking orders as follows:

- For an Order of Possession based on unpaid rent;
- For a Monetary Order for unpaid rent; and
- To recover the cost of filing the application.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated claims. I considered only the tenants request to cancel the 10 Day

Notice. The tenants' other claims are dismissed with leave to re-apply. As the landlord's application is directly related, I will consider it.

Both the tenants and the landlord's agents attended the hearing. As both parties were present, service was confirmed.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled?

Is the landlord entitled to an Order of Possession and a Monetary Order for unpaid rent?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

Evidence was provided showing that this tenancy began on March 15, 2020, with a monthly rent of \$1,965.00, due on first day of the month, with a security deposit in the amount of \$950.00.

The landlord testified that the tenants are owing \$1,965.00 for all of July 2023 rent and provided into evidence the tenants' lease ledger showing that cheque number 185 for July 2023 rent was returned for non-sufficient funds.

The tenants testified that they are not owing any rent and provided into evidence a bank transaction showing that cheque number 185 for July 2023 rent was cleared on July 6, 2023. The cheque amount was for \$2,168.71.

The 10 Day Notice was attached to the tenants' door on August 17, 2023. The tenants' confirmed that they received it on August 17, 2023.

The Notice was entered into evidence by the landlord for unpaid rent in the amount of \$3,345.87 due on August 1, 2023. Signed and dated August 17, 2023, with an effective date of August 27, 2023.

Analysis

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

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 tenant(s) 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 17, 2023, and that the tenants had until August 22, 2023, to dispute the 10 Day Notice or to pay the full amount of the arrears.

I accept the tenants' testimony that the full amount of rent for July 2023 rent was paid and that the cheque cleared on July 6, 2023.

I find that the landlord has not shown sufficient grounds to validate the 10 Day Notice and obtain an end to this tenancy.

Conclusion

The landlord's application is dismissed in its entirety, without leave to reapply.

The tenant's application is granted for cancelation of the landlord's Notice under sections 46 and 55 of the Act.

The 10 Day Notice dated August 17, 2023, is canceled and is of no force or effect. This tenancy continues until it is ended in accordance with the Act.

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