



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

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

The landlord's application is seeking orders as follows:

1. For an order of possession
2. For a monetary order for unpaid rent;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice");
2. For monetary compensation under the Act; and
3. To recover the cost of filing the application.

Both parties appeared on March 26, 2024, on that date I had ended the tenancy; however, after the hearing, I had determined this matter should be reconsidered. The interim dated March 26, 2024, should be read in conjunction with this decision.

On March 26, 2024, after the hearing I had the Residential Tenancy Branch (RTB) contacted both parties by telephone, leaving the tenants a voice message to contact the RTB and informed them that this matter would be rescheduled to be heard on this date, March 28, 2024. A copy of my interim decision was also sent to both parties by email to the address they provided in their application on March 26, 2024, at approximately 2:52PM.

On March 27, 2024, the tenants left a voice message with the RTB at approximately 5:53pm at a time the RTB is closed stating this was short notice and not acceptable given the long weekend and would prefer next week.

The tenants were then contact by the RTB before the hearing was to commence to informed them that the hearing would be proceeding at 9:30am, today March 28, 2024.

The tenant then called the RTB at approximately 9:22am, March 28, 2024, asking questions. The tenants did not call into the hearing that was scheduled for 9:30am, which lasted approximately 20 minutes.

I find the tenants had sufficient time and notice of todays hearing. Simply because there is an upcoming long weekend would not justify an adjournment. The tenants did not have consent of the other party to adjourn this matter, nor did the tenants appear or have an agent appear on their behalf to justify an adjournment. Further, the tenants were able to contact the branch minutes before the hearing was to commence. I find that it was the tenants' personal choice not to attend the hearing. Therefore, the hearing proceeded in the absence of the tenants.

Issue to be Decided

Should the 10 Day Notice be cancelled?

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent?

Are party entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began on July 1, 2022. Rent in the amount of \$2,700.00 was payable on the first of each month. A security deposit of \$1,350.00 was paid by the tenants.

The tenants confirmed at the hearing on March 26, 2024, and in their application that they received a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") issued on February 15, 2024.

The tenants confirmed at the hearing on March 26, 2024, and in their amended application that they received a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "2nd 10 Notice") issued on March 5, 2024.

On March 26, 2024, the tenants confirmed they have not paid rent.

The tenants have filed a written submission which I am relying upon in their absence, I have read the submission. I have only copied a portion of that submission to give some context to their dispute.

Nov 10 2023: The Landlord produced an Addendum with inaccurate rent amount calculations to the detriment of the Landlord by \$1800. *(see pages 00B1-00B2)*

Nov 16 2023: The Tenant pointed out the mistakes to the Landlord in writing. *(see page 00B3)*

Nov 20 2023: While waiting for the corrected Addendum the Landlord issued me the 1st 10-day eviction notice. *(see pages 00B4-00B6)*

Nov 22 2023: The Landlord sent an explanation to the Tenants but never included a corrected Addendum for me to sign. *(see pages 00B7-00B8)*

Even after issuing the eviction notice, the Landlord was pressuring me under the threat of eviction to sign an inaccurate Addendum that **does NOT maintain the integrity and accuracy of our lease agreement.**

A copy of the November 10, 2023, addendum was provided by the tenants and a copy of their email sent to the landlord on November 16, 2023.

On March 28, 2024, the landlord testified that the tenants were having difficulties paying rent and they had agreed to allow the tenants to pay \$900.00 for November 2023, and \$900.00 December 2023, which they did pay, and the outstanding rent arrears would be repaid over 4 months. The landlord stated that the tenants did not like that agreement, and it was it was never signed.

The landlord testified that the tenants just decided to pay no rent at all or any of the arrears.

The landlord testified that the tenants owe \$1,800.00 for November 2023, \$1,800.00 for December 2023 and \$2,700.00 for January, \$2,700.00 for February, and \$2,700.00 for

March 2024 for a total of unpaid rent of \$11,700.00. The landlord stated that they have not breached any of the Act as they attempting to assist the tenants by allowing some of the rent for November and December 2023 to be deferred and repaid. The landlord stated the tenants have breached the Act and feel entitled to withhold the rent.

Analysis

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

Upon review of the Notice, I find the Notice is completed in accordance with the requirements of section 52 of the Act.

Section 26 of the Act requires tenants to pay rent on time, even if the landlord breached the Act, unless they have a legal right to withhold rent. Section 46 says when rent is unpaid the landlord can end the tenancy by giving a 10-day notice on any day after rent is due. The tenant can only cancel the notice if they prove rent was paid or if they had the authority under the Act. Such as an order from an Arbitrator.

Under the legislation the tenant may dispute the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities for specific reasons, such as they have proof that their rent was paid or that the tenant had the right under the Act to deduct all or a portion from their rent as follows:

1. To recover an illegal rent increase, pursuant to section 43(5) of the Act;
2. For a security deposit or pet damage deposit that is over the allowable amount, pursuant to section 19 of the Act;
3. For the cost occurred to complete an emergency repair, pursuant to section 33 of the Act; or
4. An order from an Arbitrator allowing a deduction or with written permission of the landlord.

Although the tenants filed an application for dispute resolution within the time limit permitted under the Act, I find the tenants' application must be dismissed as the tenants' admitted rent was not paid within 5 days after receiving the 10 Day Notice and the 2nd 10 Day Notice because they believed the landlord has breached the Act.

However, I find the landlord has not breached the Act or the tenancy agreement. Rather, I find the tenants breached the Act, as they were required to pay rent of \$2,700.00 per month. The landlord although not required by the Act, was going to allow

the tenants to pay partial rent of \$900.00 for each month of November and December 2023, with arrears occurring. This agreement was never signed by the tenants and further this would not have any impact on the tenants' requirement to pay \$2,700.00, commencing January 1, 2024. The tenants did not pay any rent or the arrears.

I find the tenants had no authority under the Act to withhold rent. At no time does the tenants have the right to simply withhold rent because they feel they are entitled to do so, which is the case before me. Therefore, I dismiss the tenants' application without leave to reapply.

As the tenants were not successful with their application the tenants are not entitled to recover the filing fee from the landlord.

As the tenants' application is dismissed, I find the landlord is entitled to an order of possession and a monetary order for repayment of unpaid rent, pursuant to section 55 of the Act.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenants. This order may be filed in the Supreme Court and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

I find the tenant owes the landlord \$11,800.00 comprised of unpaid rent of \$11,700.00 and the \$100.00 to recover the cost of the filing fee.

I order that the landlord retain the security deposit of **\$1,350.00** and interest of \$35.31 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$10,414.69**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants .

Conclusion

The tenants' application to cancel the 10 Day Notice and 2nd 10 Day Notice is dismissed without leave to reapply.

The landlord is granted an order of possession and a monetary order for unpaid rent and the filing fee. The landlord may keep the security deposit and interest in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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: March 26, 2024

Residential Tenancy Branch