



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCL-S, FFL, MNDCT, MNSD, FFT

Introduction

This hearing dealt cross Applications for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

The landlord applied for:

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The parties confirmed that they had both exchanged their Notice of Dispute Resolution and Application for this hearing.

Service of Evidence

Based on the submissions before me, I find that the landlord's evidence was served to the tenant in accordance with section 88 of the Act.

Based on the submissions before me, I find that the tenant's evidence was served to the landlord in accordance with section 88 of the Act.

Issues to be Decided

Is the landlord entitled to a Monetary Order for unpaid rent?

Should the notice to end tenancy be cancelled If not, is the landlord entitled to an Order of Possession?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Should there be a determination on a past rent increase?

Is the tenant entitled to a monetary order as compensation for overpayment of rent?

Should a specific order be given to compel the landlord to abide by the Act, regulation or tenancy agreement?

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 sometime in 2016. The landlord purchased the property that year and the tenants had a pre-existing tenancy with the previous landlord. There was no written agreement at that time. The parties signed a tenancy agreement on October 1, 2022, with a monthly rent of \$2,000.00, due on the first day of the month. Counsel submits that the landlord issued a 10 Day Notice to End Tenancy for Unpaid rent on November 2, 2024 as the tenants did not pay the rent since September 1, 2024 leaving a balance owing of \$8,000.00 as of this hearing. Counsel submits that the landlord is seeking a monetary order for the unpaid rent and an order of possession. Counsel submits that the current rental amount has been in effect for over two years and that the tenants did not raise the issue until the fell behind in rent.

AA spoke on behalf of the tenants. AA submits that the tenants were forced to illegal increases and that the landlord owes them over fifty thousand dollars. AA submits that the tenants didn't pay the rent because they felt there is a judgement against the landlord for illegal rent increases and that they were not required to. AA submits that the rent should be \$1083.08 per month applying the appropriate increases since 2016. AA submits that the tenants overpaid \$52,283.64 to the landlord over the years and should be applied to past and future rents.

Analysis

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, **the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.**

I address the landlords claim and my findings as follows:

Both parties agreed that they had signed a tenancy agreement that the rent was \$2,000.00 per month and that the rent was due on the first of the month in October 2022. AA stated that the tenants have been paying that amount since April 2021. AA submits that the tenants were forced to sign the agreement but failed to provide sufficient evidence of that claim. AA confirmed that the tenants did not pay since September 2024 but felt it was justified.

Based on the tenancy agreement before me and that party's agreement that the rent has been \$2,000.00 per month since at least October 2022, the landlord has provided sufficient evidence to show that the tenants did not pay the rent since September 2024 and are entitled to \$8,000.00 for the months of September to December 2024. I also find that the notice to end tenancy dated November 2, 2024 complies with section 52 of the Act and I grant the landlord an Order of Possession pursuant to section 55 of the Act for non-payment of rent. The order of possession will take effect on January 1, 2025 at 1:00 p.m.

The landlord is entitled to the recovery of the \$100.00 filing fee for this application for a total monetary award of \$8,100.00.

The tenants request to cancel the notice is cancelled without leave to reapply.

I address the tenant's application and my findings as follows:

Rental Overpayment

The tenant testified that the landlord “raised the rent illegally”. The tenant knowingly and willingly signed a new tenancy agreement and only filed to dispute the increases almost three and a half years later and did not take any steps to address it during the tenancy or mitigate any overpayment. AA stated that they had been paying \$2,000.00 per month for 18 months before signing the new agreement. If they had issues with the amount they could have and should have raised it at that time or filed an application to have it addressed. I find that the increases were by consent and that the tenant is not entitled to the recovery of those increases, accordingly; I dismiss the tenants request for a monetary order and dispute of rental increases.

I also dismiss the tenants request for an order to have the landlord comply with the Act, regulation or tenancy agreement as I have determined that this tenancy is terminated.

Conclusion

The landlord has established a claim for \$8,100.00. I grant the landlord an order under section 67 for the balance due of \$8,100.00. This order may be filed in the Small Claims Court and enforced as an order of that Court. The landlord is granted an order of possession. The order of possession takes effect on January 1, 2025 at 1:00 p.m.

The tenant’s application is dismissed in its entirety without leave to reapply.

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: December 10, 2024

Residential Tenancy Branch