



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, ERP, OLC, RP, MNR, OPR FF

Introduction

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

The landlords' application is seeking orders as follows:

1. For an order of possession based on unpaid rent;
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 tenants' application is seeking orders as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice");
2. For money owed or compensation for damage or loss;
3. To have the landlord comply with the Act;
4. To have the landlord make emergency repairs;
5. To have the landlord make repairs; and
6. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenants request to set aside the Notice to End Tenancy. The balance of the tenants' application is dismissed, with leave to reapply.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to relevant facts and issues in this decision.

Issue to be Decided

Should the Notice be cancelled?

Are the landlords entitled to an order of possession?

Are the landlords entitled to a monetary order for unpaid rent?

Are the landlord entitled to retain the security deposit in partial satisfaction of their claim?

Background and Evidence

The tenants testified that they received the Notice on July 6, 2016. The tenants stated that rent for July 2016 was not paid and they have not paid any rent for August 2016. The tenants stated that they felt justified to withhold rent as they believe the landlord has breached the Act.

The tenants confirm that they did not have the permission from an Arbitrator authorizing them to deduct any amount from the rent. The tenants did not pay for any emergency repairs as defined in the Act.

The landlords testified that the tenants currently owe rent for July 2016 and August 2016 totalling \$2,800.00 and they owe the water bill in the amount of \$170.72. The landlords stated they made an error in their application as they indicated the water bill was \$70.00; however, the tenants were fully aware that the amount due was \$170.72, which is supported by the utility invoice. The landlords seek to amend their application to the proper amount of \$170.72.

Analysis

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

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

Rules about payment and non-payment of rent

26 (1) *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

...

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 Notice because they believed the landlords have breached the Act.

However, the tenants did not have the authority under the Act to deduct any portion from the rent. At no time do the tenants have the right to simply withhold rent because they feel they are entitled to do so. Therefore, I dismiss the tenants' application to cancel the Notice.

I find that the landlords are 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 tenant.

In this case, the tenants have not paid rent for July 2016 and August 2016. I find the tenants have breached section 26 of the Act, and the landlords have suffered a loss. Therefore, I find the landlords are entitled to recover unpaid rent in the amount of **\$2,800.00**.

Further, I accept that the landlords made an error in the application as to the amount of the utilities. I find it would not be prejudicial to the tenants to amend the landlords' application as the tenants were aware they are responsible for the utilities.

The tenants did not pay the outstanding water invoice. Therefore, I find the landlords are entitled to recover unpaid utilities in the amount of **\$170.27**, which was from February 1, 2016 to July 31, 2016.

I find that the landlords have established a total monetary claim of **\$3,070.72** comprised of unpaid rent, unpaid utilities and the \$100.00 fee paid by the landlords for this application.

I order that the landlords retain the security deposit of \$700.00 in partial satisfaction of the claim and I grant the landlords an order pursuant to section 67 of the Act, for the

balance due of **\$2,370.72**. 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 tenant.

Conclusion

The tenants failed to pay rent . The tenants' application to cancel the Notice is dismissed. The landlords are granted an order of possession, and may keep the security deposit and interest in partial satisfaction of the claim. I grant a monetary 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: August 04, 2016

Residential Tenancy Branch