



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, FF

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 based on unpaid rent;
2. For a monetary order for unpaid rent; and
3. To recover the cost of filing the application.

The tenants' application is seeking an order as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, issued on October 7, 2016 (the "Notice").

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.

Issues to be Decided

Is the landlord entitled to an order of possession for unpaid rent or should the Notice be cancelled?

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

Background and Evidence

The landlord testified that the tenants rent cheque for October 2016, was returned by the bank for insufficient funds. The landlord stated that the tenants were served with a

notice to end tenancy for non-payment of rent on October 7, 2016. The notice informed the tenants that the notice would be cancelled if the rent was paid within five days. The notice also explains the tenants had five days to dispute the notice.

The landlord testified that the tenants did not pay the outstanding rent and have not paid any rent for November or December 2016.

The tenant testified that they received the Notice. The tenant stated that they asked the landlord if they received the rent cheque for October 2016 and the landlord stated they had. The tenant stated when they checked their bank account the cheque had cleared; however, a few days later they notice that the transaction was reversed. The tenant stated that they do not know why. The tenant stated they have not paid rent for November 2016, as they assumed they could withhold rent until the outcome of the hearing.

Analysis

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

I accept the landlord's evidence over the tenants. Although the tenants provided the landlord with a rent cheque for October 2016, it was returned due to insufficient funds. The tenants provided no evidence that they had the money in their bank account at the time the cheque cashable or that an error was made on behalf of the bank. The tenants have not paid rent for October and November 2016.

Although the tenants filed an application for dispute resolution within the time limit permitted under the Act, I find the tenants' application had no merit as the tenants have not paid the outstanding rent within 5 days after receiving the Notice. Therefore, I dismiss the tenants' application to cancel the Notice without leave to reapply.

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 tenant(s). This order may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord has established a total monetary claim of **\$3,300.00** comprised of unpaid rent for October and November 2016 and the \$100.00 fee paid by the landlord for this application. Although the landlord was claiming rent for December 2016, in their application, I find that portion of their claim premature as rent for December 2016, is not

due until the end the today's date. The landlord may be able to mitigate the loss of rent, if the tenants comply with my order to vacate.

At the hearing the landlord request to retain the security to offset the monetary claim. I find that request reasonable. I order that the landlord retain the security deposit of \$800.00 in partial satisfaction of the claim and I grant the landlord an order pursuant to section 67 of the Act, for the balance due of **\$2,500.00**. 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 failed to pay rent. The tenants' application is dismissed. The landlord is 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: December 01, 2016

Residential Tenancy Branch