



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, MNR, CNL, 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;
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 allow a tenant more time to make an application to cancel a notice to end tenancy;
and
2. To recover the cost of filing the application.

Both parties appeared, gave 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.

Preliminary and procedural matter

In this case the tenants received a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice"), issued on March 13, 2017, with an effective vacancy date of May 31, 2017.

On June 2, 2017, the tenants filed their application requesting more time to make their application to dispute the notice.

Section 66 (3) of the Act, the director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.

I find the tenants applied to make their application after the effective date of the notice. I find there is no authority under the Act, to grant more time as their application was filed beyond the effective date of the notice. Therefore, I must dismiss the tenants' application for more time. As

the tenants' were not successful with their application they are not entitled to recover the filing fee.

Issues to be Decided

Is the landlord entitled to an order of possession?

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

Background and Evidence

Rent in the amount of \$1,537.00 was payable on the first of each month. A security deposit of \$750.00 was paid by the tenants. The tenancy legally ended on May 31, 2017.

The landlord testified that the tenants have failed to vacate the premises as required by the notice to end tenancy. The landlord seeks an order of possession.

The landlord testified that the tenants have not paid any rent for June and July 2017. The landlord stated that June 2017, rent could be credited with the amount the tenants were entitled to receive as compensation for the Notice. The landlord seeks a monetary order for the balance due.

The tenants testified that they did not pay the landlord rent for June or July 2017.

Analysis

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

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Since I have dismissed the tenants' application, 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 must be served on the tenants and may be filed in the Supreme Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

In this case, I find the tenants' breached the Act, when they failed to vacate the rental unit. I find the tenancy legally ended on May 31, 2017, and tenants are overholding the rental unit. I find the tenants are required to pay occupancy rent. I find the landlord is entitled to recover unpaid rent for June and July 2017, in the amount of **\$3,074.00**.

I find that the landlord has established a total monetary claim of **\$3,174.00** comprised of the above-described amount and the \$100.00 fee paid for this application.

The above amount owed by the tenants will be off set with the equivalent of one-month rent (\$1,537.00) as that was the tenants compensation for receiving the Notice and the tenants' security deposit of **\$750.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$878.00**.

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 tenant.

Conclusion

The tenants' application to cancel the Notice, issued on March 13, 2017, is dismissed.

The landlord is granted an order of possession. The landlord is granted a monetary order in the above noted amount.

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: July 24, 2017

Residential Tenancy Branch