



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, RP, MND, OLC, RR, FF CNR,
MND, MNR, MNSD, OPC, OPR, FF

Introduction

The landlords and the tenants convened this hearing in response to applications.

The landlords' application is seeking orders as follows:

1. For an order of possession;
2. For damages to the rent unit;
3. For a monetary order for unpaid rent;
4. To keep all or part of the security deposit; and
5. 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;
2. To cancel a 1 Month Notice to End Tenancy for Cause;
3. For a monetary order for damage or loss under the Act;
4. To have the landlord comply with the Act;
5. To make emergency repairs for health and safety reason;
6. To have repairs made;
7. To allow a tenant to reduce rent for repair, services or facilities agreed upon; and
8. 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 both parties have indicated several matters of dispute on their Application for Dispute Resolution, the most urgent of which is the application to set aside the Notices to End Tenancy. I find that not all the claims on these 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 Notices to End Tenancy and the landlords' request for an order of possession, unpaid rent based on the notice to end tenancy and their respective filing fees. The balances of their respective applications are dismissed with leave to reapply.

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 Notices be cancelled?

Are the landlords entitled to an order of possession?

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

Background and Evidence

The tenant testified that they received the 10 Day Notice to End Tenancy for Unpaid rent on July 9, 2017. The tenants stated that they did not pay the rent within 5 days. The tenants confirmed they did not have an order from an Arbitrator allowing them to withhold rent. The tenants confirmed they did not pay to have emergency repairs completed.

Counsel for the landlord confirmed the tenants' did not pay rent and have not paid any rent for August 2017.

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.

...

How to end a tenancy is defined in Part 4 of the Act.

Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2) A notice under this section must comply with section 52 [form and content of notice to end tenancy]....

(4) Within 5 days after receiving a notice under this section, the tenant may

*(a) pay the overdue rent, in which case the notice has no effect,
or*

*(b) dispute the notice by making an application for dispute
resolution.*

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

Under the legislation the tenants may dispute the Notice for specific reasons, such as they have proof that their rent was paid or that the tenants had the right under the Act to deduct all or a portion from their rent, such as an order from an Arbitrator.

Although the tenant 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 admitted rent was not paid within 5 days after receiving the Notice and no rent has been paid. The tenants did not have the authority under the Act to withhold 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 without leave to reapply.

As I have ended the tenancy based on unpaid rent, I find it not necessary to consider the merits of the One Month Notice to End Tenancy for Cause.

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

As the tenants' application is dismissed and the landlords requested an order in their application, pursuant to section 55 of the Act, I must grant this request.

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.

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 tenants

As I have heard the issue of unpaid rent for July 2017, I find the landlords are entitled to recover unpaid rent for July 2017, in the amount of **\$1,395.95**.

I find that the landlords have established a total monetary claim of **\$1,495.95** comprised of unpaid rent for July 2017 and the \$100.00 fee paid by the landlords for this application.

I order that the landlords retain the security deposit of \$675.00 and pet deposit of \$75.00 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 **\$745.95**. 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 notice to end tenancy is dismissed. The balance of their application is dismissed with leave to reapply.

The landlords are granted an order of possession based on unpaid rent. The landlord is granted a monetary order for unpaid July 2017, rent. The landlords are authorized to keep the security deposit and pet deposit to offset the amount owed. The balance of the landlord's claim is dismissed with leave to reapply, including loss of rent for August 2017.

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 09, 2017

Residential Tenancy Branch