



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF

Introduction

The landlord and the tenant convened this hearing in response to applications.

The landlords' application is seeking orders as follows:

1. For an order of possession for 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 issued on August 2, 2017.

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

At the outset of the hearing the tenant requested that this matter be adjourned. The tenant stated that they want to amend their application to include other issues.

In this case, the tenants request for an adjournment is denied; both parties confirm rent has not been paid in full. I find any adjournment for the purpose of the tenants amending their application is not appropriate, as their application was filed on August 4, 2017. The tenants had sufficient time to comply with the Residential Tenancy Branch Rules of Procedures. I find it would also be highly prejudicial to the landlords.

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 landlords entitled to keep all or part of the security deposit?

Background and Evidence

Neither party provided a copy of the 10 Day Notice to End Tenancy for Unpaid rent. The parties agreed that the tenants were served the Notice on August 2, 2017, with an effective vacancy date of August 12, 2017. The parties agreed that at the time the Notice was issued the tenant had not paid rent for August 1, 2017, in the amount of \$1,000.00.

The tenant testified that they did not pay the rent for August 2017. The tenant stated they paid \$640.00 rent in September 2017 and on October 27, 2017, they paid October rent in full. The tenant stated that they have exceptional circumstances as to why rent was not paid.

The landlords seek an order of possession and a monetary order for unpaid rent in the amount of \$1,360.00. The landlord stated that although they have applied to retain the security deposit, they discovered damages in the rental unit and they will determine at the end of the tenancy if the security deposit should be offset with the monetary order.

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.

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

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 tenant admitted rent was not paid within 5 days after receiving the Notice because they believed they have special circumstance.

Although the tenants may have personal circumstances; 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 not pay rent because they feel they are entitled to do so. Therefore, I dismiss the tenants' application without leave to reapply.

As the tenants' application is dismissed, I find the landlords are entitled to an order of possession, pursuant to section 55 of the Act,

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.

I find the landlords are entitled to a monetary order in the amount of **\$1,460.00** comprise of unpaid rent as stated above and the \$100.00 filing fee. 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 is dismissed. The landlords are granted an order of possession and a monetary order for unpaid rent.

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: October 19, 2017

Residential Tenancy Branch