



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPC FFL CNC OLC FF FFL MNDCL-S MNRL MNRL-S OPRM-DR

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlords requested:

- an Order of Possession for cause pursuant to section 55;
- an Order of Possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent and utilities pursuant to section 67;
- a monetary order for compensation for money owed or damage under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72 .

The tenants requested:

- cancellation of the landlords’ 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- cancellation of the landlords’ 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- an order to the landlords to make repairs to the rental unit pursuant to section 33.

Both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”) and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both the landlords and tenants were duly served with each others’ Applications and evidence.

The tenants confirmed receipt of the 1 Month Notice dated August 27, 2017. Accordingly, I find that the 1 Month Notice was served to the tenants in accordance with section 88 of the *Act*.

Preliminary Issue - Service of the 10 Day Notices

The tenants amended their application to include an application to cancel the 10 Day Notice dated October 4, 2017. The tenants testified in the hearing that they made this application on October 20, 2017, the same date they found the 10 Day Notice in pieces in their yard. The tenants submitted a copy of the original notice in their evidence, and testified that they were never served this 10 Day Notice, and immediately filed their application upon finding it.

The landlords testified in the hearing that they had served the original 10 Day Notice to the tenants on October 4, 2017 by way of slipping it through an open window of the tenants' residence. The landlords testified that they had re-served the tenants a new 10 Day Notice on October 11, 2017 by personally serving them the new 10 Day Notice, but the tenants in the hearing dispute having received this 10 Day Notice. The landlords submitted a proof of service stating that both of them were present during this service, but did not provide any witness testimony to confirm the service.

Section 89 of the *Act* establishes the following special rules for service of documents.

Special rules for certain documents

89 (1) *An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:*

- (a) by leaving a copy with the person;*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;*
- (e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents].*

(2) An application by a landlord under section 55 [order of possession for the landlord], 56 [application for order ending tenancy early] or 56.1 [order of possession: tenancy frustrated] must be given to the tenant in one of the following ways:

- (a) by leaving a copy with the tenant;*
- (b) by sending a copy by registered mail to the address at which the tenant resides;*
- (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;*
- (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;*

(e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents].

It was undisputed that the first 10 Day Notice, dated October 4, 2017 was not served to the tenants in a manner that is accordance with section 89(2) of the *Act* as stated above. On this basis, I find that the tenants were not served with the 10 Day Notice dated October 4, 2017, and the 10 Day Notice is cancelled, and is of no force or effect.

The landlords testified that they had reserved a new 10 Day Notice, on October 11, 2017 by personally serving the tenants. The tenants dispute this, testifying in the hearing that they have never received a copy of this 10 Day Notice, and therefore never applied to cancel it. As the tenants dispute having received this 10 Day Notice, the onus falls on the landlords to satisfy me that the service of the application complies with section 89 of the *Act*. I find that in the absence of any witness testimony that the 10 Day Notice was personally served to the tenants on October 11, 2017, I am unable to find that the 10 Day Notice was served in accordance with the *Act*. On this basis, the 10 Day Notice dated October 11, 2017 is cancelled, and is of no force or effect.

Issues

Should the landlords' 1 Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession?

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

Are the landlords entitled to recover the filing fee for their application?

Are the tenants entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Are the tenants entitled to an order for the landlord to make repairs?

Are the tenants entitled to a monetary order for losses or money owed?

Background and Evidence

This month-to-month tenancy began on June 30, 2016, with monthly rent currently set at \$1,200.00 per month, payable on the first of each month. The landlords hold a security deposit of \$600.00. The tenants continue to reside at the rental address.

The landlords submitted the notice to end tenancy providing two grounds:

1. The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; and
2. there are an unreasonable number of occupants in a rental unit.

The landlords provided the following reasons for why they were seeking the end of this tenancy. The landlords testified that they have received numerous complaints from other tenants concerned about the tenants' guests and behaviour, including fighting, yelling, and screaming in the middle of the night. The landlords provided a copy of a contact card for a police officer containing a file number, dated September 7, 2017, stating that the police have attended for loud fighting and use of drugs. The landlords testified

that the tenants often had an unreasonable number of guests over, and they believed that there were additional occupants in the rental suite. The landlords testified that there was mail addressed to other person other than the two tenants. The landlords testified that they had expressed their concerns to the tenants, but no written warnings have been issued. The tenants testified in the hearing that they were the only two occupants in the rental suite, and disputed the landlords' claims. The tenants testified that they had guests, but there was no supporting evidence to demonstrate that they had caused any unreasonable disturbance, or had an unreasonable number of occupants in the unit.

The landlords indicated in their application that they are seeking a monetary order of \$4,012.00 as listed in the table below:

Item	Amount
October 2017 Rent	\$1,200.00
November 2017 Rent	1,200.00
Utilities for October 2017	270.00
Utilities for November 2017	17.00
Damage to the rental suite	1,325.00
Total Monetary Order Requested	\$4,012.00

The tenants did not dispute that a portion of the rent and utilities remain unpaid. The tenants testified that they had paid \$600.00 in rent each for the months of October and November 2017, which was paid through social services, and only owe \$1,200.00 in outstanding rent. The tenants did not provide any supporting evidence to support that this payment was made.

The tenants testified that they had paid cash for the October 2017 utilities, but the landlords had refused to issue a receipt for the payment. The tenants testified that there were witnesses, but the witnesses were unable to testify at the hearing. The landlords testified that no rent was paid for the months of October and November 2017, and none of the utilities were paid by the tenants for October and November 2017.

The landlords also made a monetary claim of \$1,325.00 for the damages that the tenants had caused in the suite, including damage to the doors. The tenants disputed *this claim*.

The tenants made a monetary claim of \$1,200.00, equivalent to a reduction of one months' rent, and requested an order for the landlords to comply with the Act, and make repairs to the suite. The tenants testified that since August 2017 the bathroom light was leaking water. The tenants also testified that the carpet was mouldy and smelled due to a leak from the adjacent unit. The tenants testified that they had never notified the landlords in writing about both issues, but that that the landlords were aware, and have not addressed the problems. The landlords testified that both issues were resolved, and pictures were submitted in evidence to support this.

Analysis

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. The tenants filed their application on September 6, 2017, ten days after receiving the 1 Month Notice. As the tenants filed their application within the required period, and having issued a notice to end this tenancy, the landlords have the burden of proving they have cause to end the tenancy.

It is disputed as to how many occupants living in the rental unit, and whether the tenants or other persons on the property had significantly interfered or unreasonably disturbed the landlord or other occupants. The landlords testified that mail was sent to the rental address with names that do not match the tenants'. The landlords did not provide this mail as part of their evidence, nor did they provide any witness testimony confirming this. The landlords also testified in the hearing that they had never issued any written warnings to the tenants that too many occupants could result in the end of this tenancy. I find that the landlords failed to provide sufficient evidence to support that there were an unreasonable number of occupants in the rental unit.

The landlords also provided written letters from other tenants testifying to the behaviour of the tenants. The tenants dispute that they had significantly interfered with, or disturbed other occupants or the landlords. The landlords testified in the hearing that they had never issued any written warnings to the tenants that their behaviour could result in the end of this tenancy. Despite the concerns of the landlords, I find that they failed to provide sufficient evidence to support that the tenants had significantly interfered with the landlords or other occupants to the extent that warrants the end of this tenancy. The letters submitted in evidence, and the landlords' testimony, references drug use, which was not supported by any reports or summaries of charges or convictions. In the absence of these items, I find that the landlords failed to provide sufficient evidence to support that the tenants had significantly interfered with, or disturbed other occupants or the landlords.

I allow the tenants' application to cancel the 1 Month Notice dated August 27, 2017, and the tenancy is to continue until ended in accordance with the *Act* and tenancy agreement. The landlords' application for an Order of Possession pursuant to this 1 Month Notice is dismissed without leave to reapply.

Section 26(1) of the *Act* requires the tenant to pay rent when 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".

Section 32(1) and (2) of the *Act* outlines the following obligations of the landlord and the tenant to repair and maintain a rental property:

32 (1) *A landlord must provide and maintain residential property in a state of decoration and repair that*

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

Liability for not complying with this Act or a tenancy agreement

7 *(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenants bear the burden of establishing their claim on the balance of probabilities. The tenants must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the tenants must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenants must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

The tenants confirmed in the hearing that they did not suffer any financial loss due to the leaking bathroom light and mouldy carpet, nor did they make any written requests to the landlords to address these items. The landlords dispute that these two repairs are outstanding, and provided supporting evidence to demonstrate that they had taken steps to address them. I find that the tenants failed to provide sufficient supporting evidence to support that they suffered a financial loss due to the landlords' failure to comply with the *Act* and tenancy agreement. On this basis, the tenant's monetary claim for \$1,200.00 is dismissed without leave to reapply. As the landlords dispute the outstanding repairs, and as

the tenants failed to provide sufficient evidence to support that these repairs are outstanding, their applications for an order for the landlords to comply, and for repairs, are dismissed with leave to reapply.

The landlords made a monetary claim for unpaid rent and utilities, a portion which tenants did not dispute was outstanding. The tenants testified that a portion of the outstanding rent in the amount of \$600.00 and utilities in the amount of \$270.00 was paid. The tenants were unable to provide any supporting evidence for this hearing to support that these payments were made. On this basis, I find that the landlords are entitled to a monetary order of \$2,687.00 in unpaid rent and utilities.

The landlords also made a monetary claim for damages. As this tenancy has not ended, I find this application premature, and I dismiss this portion of the landlords' monetary claim with leave to reapply.

As the landlord was only partially successful in their application, I find that they are entitled to half of the filing fee in the amount of \$50.00.

The landlords continue to hold the tenants' security deposit of \$600.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenants' security deposit in partial satisfaction of the monetary claim.

Conclusion

I allow the tenants' application to cancel the 10 Day Notice dated October 4, 2017, the 10 Day Notice dated October 11, 2017, and the 1 Month Notice dated August 27, 2017. The 2 10 Day Notices and the 1 Month Notice are of no force or effect. The landlords' application for an Order of Possession pursuant to these notices is dismissed without leave to reapply. This tenancy continues until ended in accordance with the *Act* and tenancy agreement.

The tenants' monetary application is dismissed without leave to reapply.

The tenants' applications for repairs, and for an order for the landlords to comply with the *Act*, are dismissed with leave to reapply.

The landlords' application for damages in the amount of \$1,325.00 is dismissed with leave to reapply.

I issue a \$2,137.00 Monetary Order in favour of the landlords under the following terms, which allows the landlords to recover unpaid rent and utilities, plus half the filing fee, and also allows the landlords to retain the tenants' security deposit in satisfaction of their monetary claim:

Item	Amount
Unpaid Rent for October 2017	\$1,200.00
Unpaid Rent for November 2017	1,200.00
Unpaid Utilities for October 2017	270.00
Unpaid Utilities for November 2017	17.00
Less Security Deposit	-600.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$2,137.00

The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

.

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: November 30, 2017

Residential Tenancy Branch