



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR OLC FF MNDC OPR

Introduction

This hearing dealt with applications from both parties pursuant to the *Residential Tenancy Act* (“*Act*”).

The tenants applied for –

- a cancellation of a notice to end tenancy for unpaid rent pursuant to section 46 of the *Act*;
- an Order directing the landlord to comply with the *Act* pursuant to section 62; and
- a return of the filing fee pursuant to section 72 of the *Act*.

The landlord applied for –

- an Order of Possession for unpaid rent pursuant to section 55 of the *Act*;
- a monetary award for unpaid rent pursuant to section 67 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Only the landlord’s agent, R.T. (the “landlord”) attended the hearing. The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord said that he informed the tenants in person on April 3, 2018 of the hearing scheduled for April 13, 2018. Neither party provided copies of their applications for dispute, or the notice to end tenancy. No evidence was uploaded by either party.

The landlord stated that he served the tenants with a notice to end tenancy on February 4, 2018.

Issue(s) to be Decided

Can the tenants cancel the landlord's 10 Day Notice? If not, is the landlord entitled to an Order of Possession?

Can the landlord recover a monetary award for unpaid rent?

Should the landlord be directed to comply with the *Act*?

Can either party recover the filing fee?

Background and Evidence

The landlord provided undisputed testimony that this tenancy began on December 22, 2017. He said rent was \$800.00 per month, and a security deposit of \$400.00 paid at the outset of the tenancy continues to be held by the landlord.

The landlord explained he was seeking an Order of Possession and a monetary award for unpaid rent, because the tenants had failed to pay rent for February, March and April 2018. The landlord said that no tenancy agreement was ever signed by the parties, because the tenants had refused.

Analysis

Section 55(1) of the *Act* reads as follows:

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 an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

- (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.*

Only oral testimony was provided to the hearing by the landlord. Neither party provided any physical evidence to the hearing, nor were any Notices to End Tenancy submitted. As neither party provided a Notice to End Tenancy, I find that I am unable to confirm the

form and content of the Notice to End Tenancy pursuant to section 52 of the *Act* and am unable to rule on its validity. For these reasons, the landlord's application for an Order of Possession is dismissed.

The landlord failed to provide any documentary evidence such a tenancy agreement or a rental receipt confirming the amount of rent which was due. Furthermore, the landlord did not provide a monetary order worksheet showing how much money he was seeking in his application for dispute. For these reasons, the landlord's application for a monetary award is dismissed.

Both parties must bear the cost of their own filing fee.

Conclusion

The tenants' application to cancel the landlord's notice to end tenancy was successful.

This tenancy shall continue until it is ended in accordance with the *Act*.

The landlord's application for a monetary award is dismissed with leave to reapply.

Both parties must bear the cost of their own filing fee.

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: April 13, 2018

Residential Tenancy Branch