



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDCT, RP, RR, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to section 46;
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenants and the landlord's agent (the "landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed he was an agent of the landlord's company named in this application, and had authority to speak on its behalf.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. As neither party raised any issues regarding service of the application or the evidence, I find that both parties were duly served with these documents in accordance with sections 88 and 89 of the *Act*.

Preliminary Issue – Naming of the Female Tenant

On September 10, 2018 the tenants applied for dispute resolution. During the hearing the parties agreed that one of the tenant's was improperly named in the application, specifically the female tenant's last name. The parties consented to an amendment. Accordingly, I amend the tenants' application to reflect the last name of the female tenant, as stated during the hearing.

Preliminary Issue – Sever

Rule 2.3 of the Residential Tenancy Branch *Rules of Procedure* states that claims made in an application must be related to each other and that an Arbitrator has discretion to dismiss unrelated claims with or without leave to reapply. I advised both parties at the outset of the hearing that the central and most important issue for this hearing was whether this tenancy would end pursuant to the landlord's 10 Day Notice. Accordingly I find the remaining portion of the tenants' application must be severed and must be dealt with separately through an application. Therefore the portion of the tenants' application seeking a monetary order, repair order and rent reduction is dismissed with leave to reapply.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an order of possession?

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on September 1, 2017 on a fixed term until April 30, 2019. Rent in the amount of \$6,000.00 is payable on the first of each month. The tenants remitted a security and pet deposit in the total amount of \$6,000.00 at the start of the tenancy, which the landlord still retains in trust. The tenants continue to reside in the rental unit.

The tenants confirmed receipt of the 10 Day Notice, dated September 6, 2018, posted to the rental unit door. This 10 Day Notice indicates rent in the amount of \$3,000.00 due September 1, 2018 remains outstanding and states an effective move-out date of September 20, 2018.

The landlord testified that the tenants did not pay September rent. The tenants did not dispute this; rather they testified that they withheld rent on the advice of their legal counsel. The tenants testified that they withheld rent on the basis of the landlord's breach of the tenancy agreement.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for unpaid rent the tenant may, within five days, pay the overdue rent or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

The tenants filed their application within five days but at no time did the tenants argue that September 2018 rent had been paid in full; instead they testified that they withheld rent on the basis the landlord breached the tenancy agreement. Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, whether or not the landlord complies with the *Act*, *Regulations* or tenancy agreement. Under the *Act*, the tenants were obligated to pay September 2018 rent and failed to do so.

Section 55 of the *Act* establishes that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and the tenant's application is dismissed or the landlord's notice is upheld. Section 52 of the *Act* provides that a notice to end tenancy from a landlord must be in writing and must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

Based on the landlord's testimony and the notice before me, I find that the tenants were served with an effective notice. Accordingly I dismiss the tenants' application to cancel the 10 Day Notice and find that the landlord is entitled to an order of possession, pursuant to section 55 of the *Act*.

As the tenants were not successful in this application, I do not find that the tenants are entitled to recover the \$100.00 filing fee paid for the application.

Conclusion

I grant an order of possession to the landlord effective **two (2) days after service on the tenants**.

I dismiss the tenants' application for a monetary order, repair order and rent reduction, with leave to reapply.

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 26, 2018

Residential Tenancy Branch