



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, FF

Introduction

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

The landlord's application is seeking orders as follows:

1. For an order of possession;
2. For a monetary order for unpaid rent; and
3. 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; and
2. To recover the cost of filing the application.

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.

The tenants confirmed they received the evidence from the landlord. The tenants confirmed they did not submit any evidence.

Issues to be Decided

Is the landlord entitled to an order of possession for unpaid rent?
Is the landlord entitled to a monetary order?

Background and Evidence

The tenancy began on September 1, 2017. Rent in the amount of \$2,000.00 was payable on the first of each month. A security deposit was not paid by the tenants.

At the outset of the hearing, the parties agreed that the tenancy will legally end on March 31, 2019. The landlord is entitled to an order of possession effective March 31, 2019. Therefore, I find it not necessary to consider the tenants' application to cancel the Notice.

At the outset the landlord seeks to amend their application to include subsequent unpaid rent for February and March 2019. As rent is the most basic term of a tenancy agreement, I find, pursuant to section 62(3) that the landlord's application is amended to include unpaid rent for February and March 2019.

The landlord claims as follows:

a.	Unpaid rent	\$26,000.00
b.	Subsequent unpaid rent for February and March	\$ 4,000.00
c.	Filing fee	\$ 100.00
	Total claimed	\$30,100.00

The landlord testified that the only rent they have received from the tenants was two bank drafts issued on September 26, 2018, for the total amount of \$9,000.00. The landlord stated that they have attempted to work out the issue of unpaid rent; by having the tenants sign a promissory note; however, that was not successful. The landlord seeks to recover unpaid rent in the total amount of \$30,000.00.

The tenants testified that they do not know who the landlord is. The tenants stated that their brother has always acted as an agent for the landlord. The tenants stated that they gave their brother, who they believe was acting for the landlord the amount of \$24,000.00, which was paid by bank draft.

The tenants testified that they also gave the further amount of \$9,000.00.

The tenants testified that they paid February and March 2019, rent to their brother. The tenants stated that they have no idea who the landlord is as they have never corresponded with them.

The landlord stated that the tenants brother, help in renting the unit for his brother. But they are not acting as an agent for the landlord. The landlord stated that they have

corresponded with the tenants' brother regarding the non-payment of rent. The landlord stated that they tried to have the tenants sign a promissory note for unpaid rent; however, that was not signed. Filed in evidence are email and text messages.

Analysis

Based on the above, the testimony, and evidence, and on a balance of probabilities, I find as follows:

The parties agreed that the tenancy would legally end on March 31, 2019. I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **at 1:00 PM on March 31, 2019**. A copy of this order must be served 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 tenant.

I do not accept the tenants' evidence that they do not know who their landlord is. The tenants signed a tenancy agreement, which shows who their landlord is and they have issued two (2) bank drafts in the landlord's name for the total amount of \$9,000.00.

Further, it appears by the emails that the tenants' brother was acting as agent for the tenants as the landlord was asking when the rent money was going to be paid and promises of payment were made. The emails between the landlord and tenants brother clearly show the landlord was not paid.

Even if I accept the tenants gave their brother money to pay the rent in the amount of \$24,000.00; their brother did not give that money to the landlord. I find that is a family issue or even a police issue as it could be theft of money.

Further, I find it is unreasonable that the tenants would pay any subsequent rent money to their brother, when they clearly knew their brother was not paying the rent money to the landlord.

In addition, the tenants could have had their brother attend the hearing to provide testimony to support that he was in fact, acting for the landlord when he allegedly took the money for rent.

Based, on the above I am satisfied the landlord has not received rent in the total amount of **\$30,000.00**, this would include March 2019.

I find that the landlord has established a total monetary claim of **\$30,100.00** comprised of unpaid rent, and the \$100.00 fee paid by the landlord for this application.

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 parties agreed to end the tenancy. The landlord is granted an order of possession. The landlord is granted a monetary order in the above noted amount.

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: March 01, 2019

Residential Tenancy Branch