



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNR, OPR, MNR, FF

Introduction

The landlord and the tenants 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;
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 be allowed more time to dispute a notice to end tenancy;
2. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), issued on June 2, 2019.

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 parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

Issues to be Decided

Should the tenants be allowed more time to dispute a notice to end tenancy?

Should the Notice be cancelled?

Is the landlord entitled to an order of possession?

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

Is the landlord entitled to keep all or part of the security deposit?

Background and Evidence

The parties agreed that the tenants received the Notice on June 2, 2019.

The landlord testified that the tenants did not pay the rent within 5 days and did not dispute the Notice until July 2, 2019.

The landlord testified that the tenants attempted to pay the outstanding rent on June 11, 2019, and it was not accepted as it was outside the 5 days. The landlord stated that they did accept June 2019, rent on July 3, 2019, for use an occupancy only. The landlord stated rent for July 2019 and August 2019 has not been paid and the current outstanding rent is the amount of \$1,800.00. The landlord seeks an order of possession and a monetary order for unpaid rent.

The tenants agreed that they first attempted to pay the outstanding rent was June 11, 2019, which was after the 5 days' period. The tenants acknowledged that they have not paid rent for July 2019 and August 2019.

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.

In this case, I have reviewed the Notice; the Notice does not comply with section 52 of the Act, as the date signed by the landlord is omitted.

Section 68 of the Act states

68 (1) If a notice to end a tenancy does not comply with section 52 *[form and content of notice to end tenancy]*, the director may amend the notice if satisfied that

- (a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and
- (b) in the circumstances, it is reasonable to amend the notice.

I am satisfied that it is reasonable to amend the Notice pursuant to section 68(1) of the Act, to include the date it was issued by the landlord, June 2, 2019, as the tenants receiving the Notice, knew or should have known it was issued on the date it was received.

Section 66 (3) of the Act, states the director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.

In this case, the tenants have requested more time to be allowed to dispute the Notice. However, the tenants' application was filed on July 2, 2019, which is beyond the effective date of the Notice, which was June 13, 2019. I find there is no authority under the Act, to grant the tenant's more time to make their application, as it was filed beyond the effective date in the Notice. I find the tenancy legally ended on June 13, 2019. Therefore, I dismiss the tenants' application.

As the tenants' application is dismissed, I find the landlord is 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 landlord is 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 tenant.

The tenants paid June 2019, rent on July 2, 2019. The tenants have not paid rent for July 2019 and August 2019. I find the tenants have breached section 26 of the Act and the landlord has suffered a loss.

I find that the landlord has established a total monetary claim of **\$1,900.00** comprised of unpaid rent, for July 2019 (\$900.00) and unpaid rent for August 2019 (\$900.00) and the \$100.00 fee paid by the landlord for this application.

I order that the landlord retain the security deposit of \$450.00 in partial satisfaction of the claim and I grant the landlord an order pursuant to section 67 of the Act, for the

balance due of **\$1,450.00**. 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.

I should note for the record the tenants' application for dispute resolution had two different notices of hearing issued. The notice of hearing scheduled for August 29, 2019, had been cancelled by the Residential Tenancy Branch. A new notice of hearing was issued joining their respective applications to be heard on today's date. There is no hearing scheduled of August 29, 2019.

Conclusion

The tenants failed to pay rent. The tenants did not file to dispute the notice to end tenancy until after the effective date of the Notice. The tenants' application is dismissed.

The landlord is granted an order of possession, and may keep the security deposit and interest in partial satisfaction of the claim. I grant a monetary order for the balance due.

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: August 02, 2019

Residential Tenancy Branch