



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR FFT OLC FFL 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 non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent 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’ 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

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 tenant were duly served with the Applications and evidence.

At the outset of the hearing both parties confirmed that the tenants had moved out on July 31, 2019. As the tenancy had ended, both applications were cancelled with the

exception of the landlords' monetary application for unpaid rent and recovery of the filing fee.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As I was not required to make a decision on the merits of the tenants' case, I find that the tenants are not entitled to recover the \$100.00 filing fee paid for this application. The tenants must bear the cost of this filing fee.

Issue(s) to be Decided

Are the landlords entitled to monetary compensation for unpaid rent?

Are the landlords entitled to recover the filing fee for this application from the tenants?

Background and Evidence

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.

This tenancy began on November 1, 2012, and ended on July 31, 2019. Both parties confirmed that rent was set at \$1,050.00 at the end of the tenancy. The landlords had collected a security deposit at the beginning of this tenancy, but indicated in the hearing that they did not want the security deposit to be dealt with as part of this application.

The tenants were served with a 10 Day Notice for Unpaid rent on July 11, 2019 for failing to pay the July 2019 rent. The tenants do not dispute that they had withheld the July 2019 rent as they feel that they had the right to do so.

The tenant CM testified in this hearing that both parties had always communicated with each other in a casual manner. The tenant testified in the hearing that the landlord had sent her a message via a social media messenger on April 29, 2019 that they had 3 months to move out because the landlords were selling the home. The tenants feel that they were given official notice by the landlords that they were selling the property, and therefore the tenants should be entitled to a month's free rent.

The landlords testified that no 2 Month Notice was ever served on the tenants. The landlord RT testified that the tenants gave notice on July 2, 2019 that they would be

moving out, and did not pay any rent for July 2019. The landlords are seeking a monetary order for the July rent.

Analysis

Section 49 of the *Act* allows for the landlord to issue a Notice to end the tenancy for landlord's use, and states the following:

7) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(8) A tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice.

(9) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

Section 52 of the *Act* requires that the above Notice complies with the *Act*, specifically, that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) state the grounds for ending the tenancy, and (e) be in the approved form.

Although the tenants' testimony is that the landlords had communicated to the tenants that the tenants must move out, I find that no notices to end tenancy other than the 10 Day Notice dated July 10, 2019 were issued to the tenants that complies with section 52(e) of the *Act*. The tenants feel that they should be entitled to compensation pursuant to section 51 below, which requires that a notice be given under section 49 of the *Act*.

Tenant's compensation: section 49 notice

51 (1) *A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on*

or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if

(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or

(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

I find that the tenants had moved out, and not as a result of receiving a Notice to End Tenancy pursuant to Section 49 of the *Act*. The tenants are therefore not entitled to monetary compensation equivalent to one month's rent pursuant to section 51 of the *Act*, and did not have a right to deduct this amount from the monthly rent.

Section 26 of the *Act*, in part, states as follows:

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.

I find that the tenants did not pay rent for July 2019, and as they were not in possession of an Order allowing them to withhold or deduct this rent, I allow the landlords' monetary claim for the July 2019 rent.

As the landlords were successful in their application, I allow the landlords to recover the \$100.00 filing fee from the tenants.

Conclusion

As the tenants had moved out on July 31, 2019, the tenants' entire application is cancelled. The tenants' application to recover the filing fee is dismissed without leave to reapply.

I allow the landlords' application to recover the July 2019 rent as well as the filing fee for this application. I issue a Monetary Order in the amount of \$1,150.00 in the landlords' favour.

The landlords are provided with this Order in the above terms and the tenant(s) must be served with a copy of 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: September 19, 2019

Residential Tenancy Branch