



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, SS, RRP, OPR, MNR, FF

Introduction

This hearing was convened in response to applications by the landlord and the tenants.

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 for Unpaid Rent (the "Notice");
2. To suspend or set condition on the landlord's right to enter;
3. To be allowed to reduce rent for repairs;
4. To have the landlord comply with the Act; and
5. To recover the cost of filing the application.

Both parties appeared, gave affirmed 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.

Preliminary and procedural matters

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenants have indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End

Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenants request to set aside the Notice to End Tenancy and the tenants' application to recover the filing fee at these proceedings. The balance of the tenants' application is dismissed, with leave to reapply.

Issues to be Decided

Should the Notice to end tenancy be cancelled?

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary for unpaid rent?

Is the landlord entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began on July 1, 2019. Rent in the amount of \$2,250.00 was payable on the first of each month. A security deposit was not paid.

The parties agreed that the tenants were served with the Notice, issued on November 3, 2019, with an effective vacancy date of November 13, 2019.

The landlord testified that the tenants did not pay any rent for November 2019 and have failed to pay any subsequent rent for December 2019 and January 2020. The landlord seeks to recover unpaid rent in the amount of \$6,750.00.

The tenant RJ testified that they have not paid the landlord any rent for the stated months. The tenant stated they believe the landlord has breached the Act. The tenant stated they did not have the authority under the Act to withhold rent.

The tenant KL testified that they had ended the tenancy prior to the unpaid rent issue. KL stated that their co-tenant did not move-out and has remained in the rental unit.

The landlord responded that they agree the KL moved-out; however, they are on the lease.

Analysis

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

In this case, the tenant KL moved out of the rental unit; however, the tenancy did not end, as the co-tenant remained in the rental and KL was not removed from the lease. KL is jointly responsible and liable under the terms of the lease, regardless if they have vacated.

I accept the evidence of the landlord that the Notice was completed in accordance with Part 4 of the Act - How to End a Tenancy, pursuant to section 46 of the Act. A copy of the Notice was filed in evidence for my review and consideration.

I find the Notice was completed in the approved form and the contents meets the statutory requirements under section 52 of the Act. While I accept the landlord omitted to put their name on the form as the landlord, I find the landlord did print their name and sign the document on the signature area. I find this omission does not invalidate the Notice as the tenants were aware it was from the landlord. I find it appropriate to amend the Notice to include the landlord's name, pursuant to section 68 of the Act.

In this case, the tenants disputed the Notice; however, the tenants' application has no merit as they have not paid rent and had no authority under the Act to withhold rent, such as an order from an Arbitrator. Tenants cannot withhold rent simply because they feel entitled to do so, such as in this case. I find the Notice is valid and remains in full force and effect. I find the tenancy legally ended on November 13, 2019, and the tenants are overholding the premise. Therefore, I dismiss the tenants' application to cancel the Notice. As the tenants' application is dismissed, I find the tenants are not entitled to recover the cost of the filing fee from the landlord.

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 tenants.

I find the tenants have breached section 26 of the Act, when they failed to pay rent for November, December 2019, and January 2020 and this has caused losses to the landlord. Therefore, I find the landlord is entitled to recover unpaid rent in the amount of **\$6,750.00**.

I find that the landlord has established a total monetary claim of **\$6,850.00** comprised of the above amount and the cost of the filing fee from the tenants.

Conclusion

The tenants failed to pay rent. The tenants' application to dispute the Notice is dismissed. The landlord is granted an order of possession and a monetary order for unpaid rent.

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: January 06, 2020

Residential Tenancy Branch