



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants filed under the Residential Tenancy Act (the “Act”), to cancel two 10 Day Notices to End Tenancy for Unpaid Rent or Utilities (the “Notices”), both issued on January 2, 2020, to reduce rent for repairs and to recover the filing fee.

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.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to relevant facts and issues in this decision.

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 tenant 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 tenant’s request to set aside the Notice to End Tenancy and to recover the filing fee at these proceedings. The balance of the tenants’ application is dismissed, with leave to reapply.

Issue to be Decided

Should the Notices be cancelled?

Background and Evidence

The tenant testified that they received the Notices on January 13, 2020. The tenant stated that they believe they had overpaid rent and were entitled to withhold the rent.

The tenant testified that their rent was \$1,400.00 per month; however, it was reduced to \$500.00 due to restoration of the basement. The tenant stated that they paid the full rent for October and November 2019, and they later determined that they should have only paid \$500.00 as there was a window that had not yet be installed and the front door was not functioning properly. The tenant stated that they pay the full rent for October and November 2020, as the landlord demanded the full rent to be paid.

The landlord testified that the restoration company had finished in the basement before October 1, 2019; however, there was a window that needed to be installed and they had no control over when it was delivered, which does not justify the monthly rent being reduce by \$1,100.00.

The landlord testified that the tenants did pay the full rent for October and November 2019, in accordance with the agreement; however, the tenants have not paid any rent for December 2019, January, February, and March 2020.

Analysis

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

I accept the evidence that rent was reduce for August and September 2019 from \$1,400.00 per month to \$500.00 per month for the restoration work that was required in the basement. The agreement further states that rent would increase on October 1, 2019 back to the original amount. It also states if the restoration is not complete the rent reduction would continue.

I accept the evidence of the landlord that the scope of the restoration was completed before October 1, 2019, except for the window. The tenants paid the full rent for October and November 2019. This support that the restoration work of the basement was completed to such a level that a rent decrease was no longer warranted.

Further, if the tenants disagreed with the landlord's position that the scope of the restoration was complete and full rent was to be paid commencing October 1, 2019; it

was the tenants' responsibility to make an application to determine if the rent reduction should continue or another amount set. This was to be done **prior to withholding rent**, which they did not do. I find the tenants breached the Act, when they failed to pay rent for December 2019, January, February, and March 2020.

I find the Notices are valid. I find the tenancy legally ended in accordance with the Act. Therefore, I dismiss the tenants' application without leave to reapply.

As the tenants were not successful with their application the tenants are not entitled to recover the filing fee from the landlord.

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 tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

Conclusion

The tenants' application is dismissed. The landlord is granted an order of possession.

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 02, 2020

Residential Tenancy Branch