



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Midland Maintenance Services
Inc. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: RP, CNR, OPR, MNR, MNSD

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;
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 have the landlord make repairs to the rental unit;
2. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent, (the "Notice"); and
3. 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.

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 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 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 retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The parties agreed that the tenants were served with the Notice. The landlord's agent testified that the tenants have not paid any rent since October 2019. The landlord seeks an order of possession and a monetary order for six months of unpaid rent in the amount of \$5,400.00.

The tenants testified that they have not paid rent. The tenants stated that the landlord will normally tell them when they are coming to the building to collect rent; however, the landlord has not contacted them.

The landlord's agent stated the tenants are just refusing to pay the rent.

Analysis

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

Although the tenants filed an application to dispute the Notice, I find their application has no merit as they have admitted rent was not paid and they have not paid any subsequent rent. I find it more likely than not that the tenants were withholding rent, as the only details they submitted in their application was for repairs. I find the tenants have breached section 26 of the Act.

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.

I find that the landlord has established a total monetary claim of **\$5,500.00** comprised of unpaid rent from October 2019, up to and including March 2020, 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 **\$5,050.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

The tenants failed to pay rent. 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: March 22, 2020

Residential Tenancy Branch