



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, MNDCT, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Tenants under the *Residential Tenancy Act* (the “Act”), seeking:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”);
- An order for the Landlord to comply with the *Act*, regulation or tenancy agreement;
- A monetary order for money owed or damage or loss under the *Act*, regulation or tenancy agreement; and
- Recovery of the filing fee.

I note that section 55 of the *Act* requires that when a tenant submits an Application seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with section 52 of the *Act*.

The hearing was convened by telephone conference call and was attended by the Tenant M.J., Legal Counsel for the Landlord and an Agent for the Landlord, all of whom provided affirmed testimony. Those present were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Neither party raised concerns regarding service or receipt of the Notice of Dispute Resolution Proceeding, including a copy of the Application and notice of the hearing, or the documentary evidence before me for review.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure; however, I refer only to the relevant facts and issues in this decision. At the request of the parties,

copies of the decision and any orders issued in their favor will be emailed to them at the email address provided in the hearing.

With the consent of the parties present I removed two of the parties originally named as Applicants in the Application as they are minor children of the Tenants M.J. and S.C., and therefore occupants of the rental unit, not Tenants.

At the start of the hearing the Tenant stated that they wished to withdraw the portion of their Application seeking a monetary order for money owed or damage or loss under the *Act*, regulation or tenancy agreement as they do not yet have a full accounting of the damages owed, which may end up being in excess of \$35,000.00. The Agent and Legal Counsel for the Landlord agreed to the withdrawal, so I granted the Tenant's request to withdraw this portion of their Application.

The parties agreed that the Tenants have now vacated the rental property due to frustration of the tenancy as a result of a roof leak and subsequent ceiling collapse, and that the Landlord has possession of the rental unit. Although there was disagreement about the exact date upon which the tenancy was frustrated, all parties agreed that the tenancy was frustrated on or before February 1, 2020. As a result, the Agent and Legal Counsel for the Tenant agreed that no rent was due on or after February 1, 2020, as the Tenancy was frustrated by that point.

Based on the above, I find that the validity of the 10 Day Notice is a moot point as the parties agree that the Tenant has vacated the rental unit and that the Landlord has possession of the rental unit. Despite the foregoing, and pursuant to sections 67 and 72 of the *Act*, I grant the Tenant recovery of the \$100.00 filing fee as the Tenant was entitled to dispute the 10 Day Notice and the issue of possession of the rental unit and whether rent was in fact due for February 2020, was not settled between the parties until shortly before the hearing.

Conclusion

The parties agree that the tenancy has ended, that the Landlord has possession of the rental unit, and that no rent was due for February 2020 as the tenancy was frustrated.

Pursuant to sections 67 and 72 of the *Act*, I grant the Tenants a Monetary Order in the amount of \$100.00. The Tenants are provided with this Order in the above terms and the Landlord must be served with this Order as soon as possible. Should the Landlord

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: March 25, 2020

Residential Tenancy Branch