



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AAT, RR, RRP, MNRT, OLC, LRE, CNR, OPR, MNR, FF

Introduction

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

The landlords' 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 cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") issued on January 20, 2020.
2. To have the landlords make repairs to the rental unit;
3. To be allowed to reduce rent for repairs, service or facility not provided;
4. To have the landlord allow access to the unit; 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.

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 the tenant's application to recover the filing fee at these proceedings. The balance of the tenant's applications is dismissed, with leave to reapply.

Preliminary and Procedural matters

In this case, the tenants have listed multiple tenants as applicants in their application. However, I note the tenancy agreement is only signed by the tenants JA and CM. Therefore, any other parties listed in the tenancy agreement would be occupants. Occupants have no legal rights or obligation under the Act. Therefore, I have amended the style of cause to reflect the only two tenants that have signed the tenancy agreement.

In this matter the tenants are relying on a decision made on September 24, 2019. The decision allows the tenants not to pay rent for December 2019 by settlement agreement. The parties agreed that the tenants filed a petition in Supreme Court and by consent, on January 8, 2020, a new hearing was granted.

The tenants submit that the Supreme Court order, is only related to the Order of Possession. The tenants submit that the compensation portion was not set aside.

The landlords argued that the decision of September 24, 2019, was squashed in its entirety, and new hearing was granted, which is to be heard in April 2020. The landlords stated that they only agreed to give the tenants compensation as part of the settlement agreement, as they wanted the tenancy to end.

The landlords argued that when the decision of September 24, 2019, was quashed on January 8, 2020, the tenants were obligated to pay the rent for December 2019.

The tenant argued that the compensation had nothing to do with the agreement to end the tenancy.

In this matter, neither party provided me with a copy of the Supreme Court order for me to consider. I find I must review the Supreme Court order to determine whether the tenants still had the right under the Act, to withhold the rent.

Therefore, I ordered both parties at the hearing to provide me with a copy of the Supreme Court order no later than March 29, 2020. While the deadline for filing the above documents is on the weekend, as the Residential Tenancy Branch is not

open; however, both parties confirmed they are able to upload those documents online by the date indicated.

I have reviewed the evidence requested on March 30, 2020, the landlords provided a copy of the Supreme Court order on March 27, 2020, after the hearing. **The tenants did not comply with my order.**

However, I am satisfied the copy the landlords have provided is a genuine copy of the Supreme Court order, as it is identical to the copy that was provided to the Residential Tenancy Branch for the files that were granted a new hearing.

Issues to be Decided

Should the Notice be cancelled?

Are the landlords entitled to a monetary order for unpaid rent?

Are the landlords entitled to retain all or part of the security deposit?

Background and Evidence

The parties entered into a tenancy agreement on February 12, 2016. Rent in the amount of \$2,500.00, was payable on the 1st of each month. The tenants paid a security deposit in the amount of \$1,250.00.

The landlord testified that they issued the Notice on January 20, 2020, for unpaid rent for December 2019, because the tenants had the decision and settlement agreement made on September 24, 2019, quashed on January 8, 2020. The landlords stated the tenants have an obligation to pay rent until their respective application are reheard in April 2020.

The tenant testified that they received the Notice and they did not pay the rent for December 2019, because that part of the decision was not quashed by the Supreme Court, only the issue of the Order of Possession. The tenant stated the issue of unpaid rent will be considered at the next hearing. The tenant submits the original decision was also valid until January 14, 2020.

Analysis

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

I have reviewed the Supreme Court order issued on January 8, 2020. The order reads in part as follows,

“By consent, execution of the Order of Possession that the Arbitrator granted in the Decision is stayed;

By consent, the Decision is quashed and remitted to a different arbitrator of the RTB for reconsideration ...As a result of this procedural unfairness there was prejudice to the Petition with respect to a recorded settlement agreement”

In this case, the Supreme Court order of September 24, 2019, was quashed, which nullifies the decision in its entirety, this included any recorded settlement agreement which was determined procedural unfair.

All issues in both parties' respective applications that were heard on September 24, 2019, will be reheard; that includes whether the tenants are entitled to any compensation under the Act. Neither of these applications are related to the issue of December 2019, rent as rent was not due at that time.

The parties agreed that the tenants were served with the Notice on January 20, 2020, after the Supreme Court order was made on the tenants' petition. Although the tenants disputed the Notice, I find the tenants cannot rely upon the decision made on September 24, 2019, which gave them permission not to pay December 2019, rent because the tenant appealed the decision in the Supreme Court and their petition was granted, by consent, and the decision was quashed. I find as soon as the Supreme Court Order was granted on January 8, 2020, rent for December 2019, became due and owing.

The tenants did not pay the outstanding rent, after they were given the Notice on January 20, 2020, and it remains outstanding as of today's date March 27, 2020.

I find the tenants have breached section 26 of the Act, when they failed to pay rent for December 2019, when it became due and owing on January 8, 2020; this was the date the Supreme Court order was made.

I find the Notice is valid and remains in full force and effect. Therefore, I dismiss the tenants' application to cancel the Notice without leave to reapply. As the tenants were not successful, I decline to award the recovery of the filing fee.

I find that the landlords are entitled to an order of possession, pursuant to section 55(1) 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 landlords are entitled to recover unpaid rent for December 2019 in the amount of **\$2,500.00**.

I find the landlords have established a total monetary claim of **\$2,600.00**, comprise of the above amount and the \$100.00 for filing the application. I authorize the landlords to retain the security deposit of \$1,250.00 in partial satisfaction of the claim. I grant the landlords a formal order for the balance due of **\$1,350.00**.

This order may be filed in the Provincial Court and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants

Conclusion

The tenants' application to cancel the Notice is dismissed. The landlord is granted an order of possession and a monetary order as described above.

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 30, 2020

Residential Tenancy Branch