



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFL, OPRM-DR, OPR-DR CNR, LAT, LRE, MNDCT, MNRT

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlords requested:

- an Order of Possession for unpaid rent pursuant to section 55; and
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenants requested:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to allow the tenants to change the locks to the rental unit pursuant to section 70; and
- an order to suspend or set conditions on the landlord’s right to enter the rental unit pursuant to section 70.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

Both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”) and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both the landlords and tenants were duly served with the Applications and evidence.

The landlords provided undisputed testimony that the tenants were personally served with the 10 Day Notice dated February 3, 2020 on the same date. In accordance with section 88 of the *Act*, I find that the tenants duly served with the 10 Day Notice.

At the beginning of the hearing it came to my attention that the tenants had a future hearing scheduled to deal with a matter related to this same tenancy and landlord. The hearing is set for June 18, 2020 to deal with the tenants' application. The tenants requested that this matter be heard with this application, which the landlords opposed. The landlords testified that they have not had the opportunity to prepare for that hearing or submit evidence, and want to proceed with the matter as scheduled on June 18, 2020 in order to do so. As the landlords did not consent to this matter being heard, the tenant application will be heard on June 18, 2020 as scheduled.

The tenants confirmed in the hearing that the only matter they wished to proceed with during this hearing, other than the above referenced future hearing, is the matter related to the 10 Day Notice to End Tenancy and unpaid rent. Accordingly, the remaining portions of the tenants' application are considered withdrawn. Liberty to reapply is not an extension of any applicable time limits.

Preliminary Issue—Amendment to Landlord's Application

On April 14, 2020 the landlords attempted to file an amendment increasing their monetary claim.

Rule 4.6 states the following:

As soon as possible, copies of the Amendment to an Application for Dispute Resolution and supporting evidence must be produced and served upon each respondent by the applicant in a manner required by the applicable Act and these Rules of Procedure.

The applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Amendment to an Application for Dispute Resolution and supporting evidence as required by the Act and these Rules of Procedure.

In any event, a copy of the amended application and supporting evidence must be received by the respondent(s) not less than 14 days before the hearing.

I find that the landlords attempted to file an amendment less than 14 days before the hearing.

As this amendment was not received in accordance with RTB Rule 4.6, and the respondent has the right to review and respond to the amendment and supporting evidence, the amendment will not be considered as part of this application.

RTB Rules of Procedure 4.2 does allow for amendments to be made in circumstances where the amendment can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made. In this case the landlords testified that the tenants have not paid rent for the months of January through to April 2020. On this basis, I have accepted the landlords' request to amend their original application from \$4,100.00 to \$8,100.00 to reflect the unpaid rent that became owing by the time this hearing was convened.

Issue(s) to be Decided

Should the landlords' 10 Day Notice be cancelled? If not are the landlords entitled to an Order of Possession for unpaid rent?

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

Are the landlords entitled to recover the filing fee for this application?

Background and Evidence

Both parties confirmed the following facts. This month-to-month tenancy began on May 1, 2019, with monthly rent set at \$2,000.00, payable on the first of every month. The landlords collected a security deposit in the amount of \$1,000.00, which the landlords still hold.

The landlords served the tenant with a 10 Day Notice to End Tenancy on February 3, 2020 for failing to pay the outstanding rent for January or February 2020. The tenants do not dispute that they have not paid any of the rent for January through to April 2020. Both parties discussed a possible payment plan in the hearing, but neither party was able to reach a mutual resolution. The landlords are seeking a monetary order for unpaid rent plus recovery of the filing fee.

Analysis

Section 52 of the *Act* provides the following requirements requiring the form and content of notices to end tenancy:

52 *In order to be effective, a notice to end a tenancy must be in writing and must*

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy, and

(e) when given by a landlord, be in the approved form...

The 10 Day Notice to End Tenancy does not state the effective date of the notice as required by section 52(c) of the *Act*. As the 10 Day Notice does not comply with section 52 of the *Act* in form and content, I find that the 10 Day Notice to have no legal effect.

Under these circumstances, I am granting the tenants' application to cancel the 10 Day Notice as it is invalid. The tenancy will continue until ended in accordance with the *Act*.

Section 26 of the *Act*, in part, states as follows:

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.

The landlords provided undisputed evidence in the hearing that the tenants failed to pay the rent in full for the months of January 2020 through to April 2020. Therefore, I find that the landlords are entitled to \$8,000.00 in arrears for the above period.

I allow the landlords to recover the \$100.00 filing fee for this application.

The landlords continue to hold the tenants' security deposit in the amount of \$1,000.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenants' security deposit in partial satisfaction of the monetary claim.

Conclusion

I allow the tenants' application to cancel the 10 Day Notice to End Tenancy. The 10 Day Notice dated February 3, 2020 is cancelled, and is of no force or effect. The tenancy will continue until ended in accordance with the *Act*.

The remainder of the tenants' application was withdrawn.

I issue a \$7,100.00 Monetary Order in favour of the landlords under the following terms, which allows the landlords to retain the tenants' security deposit in partial satisfaction of the monetary claim for unpaid rent and recovery of the filing fee:

Item	Amount
Unpaid Rent for January 2020	\$2,000.00
Unpaid Rent for February 2020	2,000.00
Unpaid Rent for March 2002	2,000.00
Unpaid Rent for April 2020	2,000.00
Recovery of Filing Fee	100.00
Less Security Deposit	-1,000.00
Total Monetary Order	\$7,100.00

The tenants must be served with this Order as soon as possible. Should the tenants 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: April 16, 2020

Residential Tenancy Branch