



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, CNR, MT, RP, OLC

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.

The tenant requested:

- cancellation of the landlords’ 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- more time to make an application to cancel the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 66.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other.

Preliminary Issue

As part of the tenant’s application, they indicated they needed more time to file an application to dispute the notice, however the tenant filed their application within five days of receiving the notice to end tenancy and therefore does not require more time, accordingly; that portion of the tenant’s application is dismissed. This was explained to the parties and the parties acknowledged and agreed with the finding.

Issues to be decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities be cancelled? If not, is the landlord entitled to an order of possession?

Should the landlord be compelled to conduct repairs to the unit/suite?

Should the landlord be compelled to comply with an order under the Act, regulation or tenancy agreement?

Background and Evidence

Both parties agree that the tenancy began on September 1, 2019 for a fixed term of one year. The monthly rent is payable on the first of each month in the amount of \$1000.00. The tenant paid a security deposit of \$500.00 which the landlord still holds.

The landlord's agent gave the following testimony. The tenants failed to pay the rent for the months of January – March 2020. The landlord served the tenants a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on March 5, 2020. The tenants further failed to pay the rent for April. The agent testified that the amount of unpaid rent as of today's hearing is \$4000.00. The landlord requests an order of possession and that the tenancy ends. The agent testified that repairs that were needed were conducted but regardless, the tenants are responsible to pay the rent.

The tenant gave the following testimony. The tenant testified that he agrees that the amount of unpaid rent is \$4000.00. The tenant testified that he has the money in cash and can pay the rent. The tenant testified that the landlord has attempted to evict him based on a renovation notice and that he refused to maintain the property. The tenant testified that he was told by the Branch to not pay rent and wait for this hearing and have an Arbitrator order the landlord to accept payment. The tenant testified that if he could move, he would.

Analysis

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 tenant does not dispute that rent has not been paid but feels he is justified as there was ongoing repair issues. The tenant has not provided sufficient evidence to show that they had a right under the Act to deduct all or a portion of the rent, accordingly; I find that rent was not paid for the months of January – April 2020.

Section 55(1) of the *Act* reads as follows:

- 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 hereby grant the landlord an order of possession as I find the notice complies with section 52 of the Act. The tenant has not been successful in their application and I therefore dismiss their application in its entirety without leave to reapply.

Conclusion

The landlord is granted an order of possession. The tenant's application is dismissed in its entirety without leave to reapply.

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 23, 2020

Residential Tenancy Branch