



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CENTURY 21 EXECTUVIES REALTY LTD SEAN
MCCOEY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ERP, OPR, MNR, MNDC, MNSD, FFL

Introduction

This was a cross-application hearing for Dispute Resolution under the *Residential Tenancy Act* (“the Act”).

On March 22, 2020, the Tenants applied for dispute resolution seeking an order that the Landlord make emergency repairs to the unit/ property. The Tenants were informed by the Residential Tenancy Branch that their application for emergency repair hearing was denied and on March 25, 2020 the Tenants submitted an amendment to their application to include the following relief:

- to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.
- to reduce rent for repairs, services or facilities agreed upon but not provided.
- for a monetary order for money owed or compensation for damage or loss.
- to suspend or set conditions on the Landlords right to enter the rental unit.
- for authorization to change the locks on the unit.
- for the Landlord to comply with the Act, Regulation or tenancy agreement.

On April 7, 2020, the Landlords applied for dispute resolution seeking the following relief:

- for an order of possession for the rental unit based on the issuance of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.
- for a monetary order for unpaid rent or utilities
- for a monetary order for money owed or compensation for damage or loss.
- to keep all or part of a security deposit and/or a pet damage deposit.

The matter was set for a conference call hearing. The Landlords and Tenants were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an

opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties confirmed that they exchanged the documentary evidence before me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important matter to determine is whether or not the tenancy is ending due to a fundamental breach of the tenancy agreement regarding payment of rent.

The remaining claims of the Tenant and Landlord are dismissed with leave to reapply.

Issues to be Decided

- Is the tenancy ending due to a fundamental breach of the tenancy agreement regarding payment of rent and is Landlord entitled to an order of possession and a monetary order for unpaid rent?

Background and Evidence

The Landlords and Tenants provided testimony that the tenancy began on June 19, 2019, as a one-year fixed term tenancy that may continue thereafter on a month to month basis. Rent in the amount of \$1,850.00 is due to be paid to the Landlords by the 19th day of each month. The Tenants paid the Landlord a security deposit of \$925.00 and a pet damage deposit of \$925.00.

10 Day Notice

The Landlords testified that the Tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 24, 2020 ("the 10 Day Notice"). The

10 Day Notice indicates the Tenants have failed to pay rent of \$1850.00 that was due on March 19, 2020. The Landlords provided a copy of the 10 Day Notice.

The 10 Day Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenants had five days to dispute the Notice. The Tenants received the 10 Day Notice on March 24, 2020 and disputed the 10 Day Notice within the required time period.

The Landlord testified that the Tenants did not pay the any of rent owing under the tenancy agreement for March 2020 within five days of receiving of the 10 Day Notice.

The Landlord testified that they received a payment of \$300.00 on April 13, 2020 and a payment of \$1000.00 on April 21, 2020. The Landlord confirmed that the Tenants still owe \$550.00 for March 2020 rent.

The Landlord testified that the Tenants have not paid the rent owing under the tenancy agreement for April 2020. The Landlord requested to amend their application to include April 2020 rent of \$1,850.00.

The Landlords applied to keep the security deposit and pet damage deposit towards their claim of unpaid rent.

The Landlord is requesting an order of possession for the rental unit and a monetary order for unpaid rent in the amount of \$2,400.00

In reply, the Tenant provided testimony agreeing that the Landlord is entitled to receive their rent. The Tenant testified that they are trying to pay their rent, but the utility bill is too high. The Tenant provided testimony agreeing that they did not pay the rent owing under the tenancy agreement within 5 days of receiving the 10 Day Notice. The Tenant suggested that the Tenants be permitted to remain in the unit and make rent payments to the Landlord.

The Tenant suggested that the Landlord needs to make emergency repairs to the rental unit and that the Tenants rent should be reduced accordingly.

The Landlord was not in agreement that the tenancy could continue based on a payment plan.

Analysis

Section 26 of the Act states that a Tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the 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.

Based on the evidence before me, the testimony of the Tenants and Landlord, and on a balance of probabilities, I make the following findings:

I find that the Tenants are required under the tenancy agreement to pay rent of \$1,850.00 to the Landlord by the 19th day of each month. I find that the Tenants failed to pay the rent for March 2020 when it was due under the tenancy agreement. I find that the Tenants received a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on March 24, 2020 and the Tenants failed to pay the March rent within five days of receiving the Notice.

While the Tenant suggested that emergency repairs are needed in the rental unit, and that rent should be reduced, the Tenant provided insufficient evidence that the Tenant paid for repairs to the rental unit in compliance with the requirements of section 33 (3) of the Act which would then permit the Tenant to deduct the amount paid from the rent. I find that the Tenants did not have a legal right to withhold payment of rent.

I dismiss the Tenants' application to cancel the 10 Day Notice dated March 24, 2020.

Under section 55 of the Act, when a Tenants Application to cancel a notice to end tenancy is dismissed and I am satisfied that the notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the 10 Day Notice complies with the requirements for form and content and I find that the Landlords are entitled to an order of possession effective two (2) 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 that the Tenants owe \$550.00 for March 2020 rent. I also find that the Tenants have not paid rent for the month of April 2020, and the Landlord has suffered a loss of rent for this month. The Tenants are aware that they are required to pay rent each month and acknowledged that they did not pay the rent. Pursuant to section 64 of the Act, I allow the Landlords claim to be amended to include an additional month of April 2020 rent in the amount of \$1,850.00.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenants to repay the \$100.00 fee that the Landlords paid to make application for dispute resolution.

I find that the Landlord has established a total monetary claim of \$2,500.00 comprised of \$550.00 in unpaid rent for March 2020; \$1850.00 in unpaid rent for April 2020; and \$100.00 for the filing fee.

I authorize the Landlords to keep the security deposit and pet damage deposit towards the unpaid rent. After setting off the deposits in the amount of \$1850.00 towards the award of \$2,500.00, I find that the Tenants owe the Landlords the balance of \$650.00.

I grant the Landlords a monetary order in the amount of \$650.00. This monetary order may be filed in the Provincial Court (Small Claims) 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 failed to pay the rent owing under the tenancy agreement within five days of receiving a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and they did not have a legal right to withhold payment of the rent.

The Tenant's application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 24, 2020 is dismissed.

The tenancy is ending due to a fundamental breach of the requirement to pay rent.

The Landlords are granted an order of possession effective two (2) days after service on the Tenants.

The Landlord is granted a monetary order for unpaid rent and the cost of the filing fee in the amount of \$650.00.

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: May 14, 2020