



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FFL, CNR, MNRT, RR, FFT

Introduction

This hearing was scheduled to deal with cross applications. The tenants applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent; recovery of emergency repair costs; and, authorization to reduce rent payable. The landlord applied for an Order of Possession for unpaid rent and a monetary order for unpaid and/or loss of rent.

The landlord appeared and was assisted during the hearing; however, there was no appearance on part of the tenants despite leaving the teleconference call open at least 30 minutes.

The landlord confirmed that he received the tenant's Application for Dispute Resolution and was prepared to respond to it. Since the tenants failed to appear for their hearing and the landlord was prepared to deal with the tenant's Application for Dispute Resolution, I dismissed the tenant's Application for Dispute Resolution without leave to reapply.

As for the landlord's Application for Dispute Resolution, I heard it given to the tenants in person at the rental unit by the landlord's assistant, WC, on September 10, 2020 and it was sent to each tenant via registered mail on September 10, 2020. The landlord had registered mail receipts and orally provided me with the tracking numbers, which I have recorded on the cover page of this decision. A search of the registered mail tracking numbers showed the registered mail was delivered on September 14, 2020. I was satisfied the tenants were duly served with notification of the landlord's Application for Dispute Resolution and I continued to hear from the landlord without the tenant's present.

In filing this Application for Dispute Resolution, the landlord indicated he seeks to recover unpaid rent of \$3300.00 for the months of November 2019 through March 2020

and this amount corresponds to the amount indicated on the 10 Day Notice. The landlord also submitted on the Application for Dispute Resolution that since May 2020 the tenants have only paid \$400.00 in rent. During the hearing, the landlords requested that I include an award for unpaid and/or loss of rent for the months of May 2020 through September 2020. Rule 4.2 of the Rules of Procedure provide that I may amend a claim during the hearing if it would reasonably be anticipated by the other party. Below, I have reproduced Rule 4.2:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

Since the landlord indicated the lack of rent from May 2020 onwards on the Application for Dispute Resolution, and the tenants continued to occupy the rental unit into September 2020 at least, I find it reasonable the tenants would expect that the landlord would seek recovery of unpaid and/or loss of rent for those months by way of this proceeding and I permitted the amendment.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord entitled to a Monetary Order for unpaid and/or loss of rent?
3. Award of the filing fee.

Background and Evidence

The landlord purchased the subject property in August 2019 and the tenants were already in possession of the rental unit. The rent was \$1650.00 per month and the tenants were to pay the monthly rent by way of two instalments of \$825.00. The landlord testified that the former owner did not transfer any security deposit or pet damage deposit to him when the property was purchased.

The landlord submitted that for the month of November 2019, December 2019, February 2020 and March 2020 the tenants only paid one-half of the monthly rent, or \$825.00 for each of these months, resulting in rental arrears of \$3300.00.

On August 15, 2020 the landlord's assistant, WC, personally served the male tenant with a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") indicating rent of \$3300.00 was outstanding as of March 15, 2020 and a stated effective date of August 25, 2020.

The tenants filed to dispute the 10 Day Notice on August 18, 2020.

The landlord testified that after serving the tenants with the 10 Day Notice the tenants did not pay any monies toward the rental arrears, or the current or subsequent month's rent. Rather, in addition to the unpaid rent indicated on the 10 Day Notice, the tenants failed to pay any rent for May 2020, June 2020, the tenants paid only \$400.00 in July 2020, the tenants failed to pay any rent for August 2020 or September 2020.

The landlord stated he is uncertain as to whether the tenants have since moved out of the rental unit as the landlord has not seen their car at the property recently but the last time they were seen at the rental unit was on September 10, 2020 when the Application for Dispute Resolution was served upon them.

Analysis

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right to withhold rent.

Where a tenant does not pay rent the landlord is at liberty to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the 10 Day Notice or the tenant has five days to dispute the 10 Day Notice by filing an Application for Dispute Resolution. I was provided unopposed evidence that the tenants did not pay the outstanding rent after receiving the 10 Day Notice; however, they filed to dispute the 10 Day notice. The tenants did not appear at the hearing to present a basis for cancelling the 10 Day Notice or otherwise establish they paid the rent. Therefore, I find the tenancy has ended pursuant to the 10 Day Notice and I find the landlord entitled to an Order of Possession.

Provided to the landlord with this decision is an Order of Possession effective two (2) days after service upon the tenants in the event they have not already vacated or abandoned the rental unit.

I accept the unopposed evidence before me that the tenants were required to pay rent of \$1650.00 every month, by way of two equal installments of \$825.00, and the tenants failed to pay the full amount of rent for the months of November 2019, December 2019, February 2020 and March 2020 in the sum of \$3300.00. I further accept that for the months of May 2020, June 2020, July 2020 and August 2020 the tenants only paid \$400.00. Finally, I accept that the tenants continued to occupy the rental unit in September 2020 and they did not pay any rent and caused the landlord to suffer a loss of rent for the month of September 2020. Therefore, I award the landlord unpaid and or loss of rent calculated as follows:

Unpaid rent up to March 2020 as per 10 Day Notice	\$ 3300.00
Unpaid rent – May 2020	1650.00
Unpaid rent – June 2020	1650.00
Unpaid rent – July 2020 (\$1650.00 - \$400.00)	1250.00
Unpaid rent – August 2020	1650.00
Loss of rent – September 2020	<u>1650.00</u>
Total unpaid and/or loss of rent	\$11150.00

I also award the landlord recovery of the \$100.00 filing fee paid for this application.

In keeping with all of the above, I provide the landlord with a Monetary Order in the sum of \$11250.00 to serve and enforce upon the tenants.

Conclusion

The landlord is provided an Order of Possession effective two (2) days after service upon the tenants in the event the tenants have not already vacated or abandoned the rental unit.

The landlord is provided a Monetary Order in the sum of \$11250.00 to serve and enforce upon the tenants.

The tenant's Application for Dispute Resolution is dismissed 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: October 02, 2020

Residential Tenancy Branch