



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT,CNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants filed under the Residential Tenancy Act (the “Act”), to be allowed more time to file their application, to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”), issued on September 3, 2020, to have the landlord comply with the Act, and to recover the cost of the filing fee.

Both parties appeared, gave 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.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to relevant facts and issues in this decision.

Preliminary and procedural matter

In this matter, the tenants have applied for more time to file their application to dispute a notice to end tenancy. The Notice is dated September 3, 2020, which was sent by registered mail. The Canada post tracking history shows it was delivered to the tenants on September 9, 2020. The tenants’ application was filed on September 11, 2020. I find the tenants did not need to apply for more time as the Notice was disputed within 5 days of it being received. Therefore, I need not consider this portion of their application.

The tenants’ application further request, an order for the landlord to comply with the Act, which are related to repairs. I find this issue is not sufficiently related to the issue of unpaid rent. Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. Therefore, I decline

to hear this portion of the tenants' application the tenants are granted leave to reapply, only if the tenancy is ordered to continue.

Issue to be Decided

Should the Notice be cancelled?

Background and Evidence

The tenancy began on September 1, 2019. Rent in the amount of \$1,200.00 was payable on the first of each month. A security deposit of \$600.00 was paid by the tenants.

The tenants testified that they received the Notice on September 9, 2020. The tenants stated that amount listed in the Notice is incorrect, as the rent for March 2020 was paid in full. The tenants stated that they have the receipt for March rent; however, they have not shown it to the landlord.

The tenants admit that they did not pay rent as follows:

	Rent due	Payments	Amount due
April	\$1,200.00	\$600.00	\$ 600.00
May	\$1,200.00	\$600.00	\$ 600.00
June	\$1,200.00	\$700.00	\$ 500.00
July to November	\$1,200.00 x5	0	\$6,000.00
		Total rent arrears	\$7,700.00

The landlord testified that they have a hearing scheduled on January 8, 2020, for the unpaid rent and an order of possession. The landlord stated that it would have been reasonable for the tenants to provide them with a copy of the March rent receipt, so they can determine if it is authentic or if there was an error in the accounting.

The landlord testified that the tenants did not pay rent for September 2020, and the Notice is valid and enforceable.

At the hearing the tenants are not disputing that the above rent is owed. The tenants stated they consent to a monetary order being made, with the exclusion of March 2020 rent. The parties agreed at the hearing that the parties will meet today, November 3,

2020, at 6:00pm for the landlord to look at the original receipt for March 2020 rent and obtain a copy so they can review their records.

Analysis

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

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

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.

...

How to end a tenancy is defined in Part 4 of the Act.

Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2) A notice under this section must comply with section 52 [form and content of notice to end tenancy].

...

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

Upon review of the Notice, I find the Notice is completed in accordance with the requirements of section 52 of the Act.

Under the legislation the tenants may dispute the Notice for specific reasons, such as they have proof that their rent was paid or that the tenants had the right under the Act to deduct all or a portion from their rent, such as an order from an Arbitrator.

While I accept the Notice included affected rent that was owed during the state of emergency and would be subject to a repayment plan, if the tenancy was to continue; however, that alone does not invalid the Notice, as any amount owed during this time would have been simply excluded due to repayment plan.

In this case the tenants admit they have not paid rent for September, October, and November 2020. This is rent due after the Ministerial Order was rescinded on August 16, 2020. I find the tenants have failed to pay rent for September 2020, the tenants were required to pay the rent within 5 days, of receiving the Notice, which admit they did not do so. The tenants did not have the authority under the Act to withhold the rent. I find the Notice is valid and remains in full force and effect. Therefore, I find the tenants' application must be dismissed.

As the tenant's application is dismissed, I find the landlord is entitled to an order of possession, pursuant to section 55 of the Act.

Order of possession for the landlord

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.

As the tenants have not paid any subsequent rent, I find that the landlord is entitled to an order of possession, pursuant to section 55 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.

As the parties agreed at this hearing that the above rent from April 2020 to November 2020, in the amount of \$7,700.00, is due and owing that it was reasonable and by consent to grant the landlord a monetary order, pursuant to section 62, 63 and 67 of the Act. Therefore, I grant the landlord a monetary order in the amount of **\$7,700.00**. This 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

However, March 2020 rent is still in dispute and if not resolved, that matter will be heard on January 8, 2020. I make no finding on March 2020 rent or any other unpaid rent after the date of this decision. The parties are to ensure they file their evidence on that file, in accordance with the Residential Tenancy Rules of Procedure.

If the parties resolve the issue of March 2020 rent prior to the scheduled date, I would suggest to the parties to have that dated cancelled as soon as possible, so the time can be allotted for other files yet to be scheduled. I have noted the landlord's file number on the covering page of this decision.

Conclusion

The tenants failed to pay rent after the Ministerial Order was rescinded. The tenants' application is dismissed. The landlord is granted an order of possession pursuant to section 55 of the Act. The landlord is granted a monetary order for unpaid rent, pursuant to section 62, 63 and 67 of the Act.

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: November 04, 2020

Residential Tenancy Branch