



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR
OPRM-DR, OPR-DR-PP

Introduction

This hearing was convened by way of conference call concerning applications made by a tenant as against a landlord, and by the landlords as against the tenants. The tenant has applied for an order cancelling a notice to end the tenancy for unpaid rent or utilities. The landlords have applied for an Order of Possession and a monetary order for unpaid rent or utilities. The landlords' application was made by way of the Direct Request process, which was referred to this participatory hearing, joined to be heard with the tenant's application.

The landlords' application names 3 landlords. One of them is named as an Advocate for the other 2 landlords, who attended the hearing and gave affirmed testimony. One of the other 2 landlords also attended the hearing with the Advocate and Legal Counsel. For the purposes of this hearing, the Advocate acted as agent for the other 2 landlords, and the agent has Power of Attorney. The tenant named in the tenant's application also attended the hearing, and also represented the other tenant named in the landlords' application.

The tenant and the landlords' agent each gave affirmed testimony, and the parties, or legal counsel were given the opportunity to question each other and to give submissions.

No issues with respect to service or delivery of evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Have the landlords established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was given in accordance with the *Residential Tenancy Act*, or should it be cancelled?
- Have the landlords established a monetary claim as against the tenants for unpaid rent?

Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on April 15, 2019 and reverted to a month-to-month tenancy after April 15, 2020, and the tenants still reside in the rental unit. Rent in the amount of \$2,400.00 is payable on the 15th day of each month. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$1,200.900 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is an apartment in a large apartment complex, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The landlords' agent further testified that on September 8, 2020 the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) by registered mail. A copy of the Notice and a registered mail receipt have been provided as evidence for this hearing. The Notice is dated September 8, 2020 and contains an effective date of vacancy of September 23, 2020 for unpaid rent in the amount of \$14,400.00 that was due on August 31, 2020. It also states that the tenants owe rent from March 15, 2020 to date.

Prior to March, 2020 the tenants were never late with the rent. The landlords' agent communicated with the tenant by text message, and the tenant continued to state that the money promised for paying the rent was delayed, and still no rent has been paid.

A hearing was held on July 28, 2020 wherein the parties agreed to a payment plan, but the tenants have defaulted by not paying the first installment due on August 31, 2020 in the amount of \$4,800.00. No rent has been paid for March 15, 2020 to date. The landlords claim \$16,800.00, which covers the rent to October 15, 2020, and an Order of Possession.

The tenant testified that the tenants have every intention of paying in full.

The tenant is the primary bread-winner, however prior to COVID-19, the tenant got sick and needs heart surgery. The tenant lost her job prior as an independent contractor and could not get government funding. The tenant's husband is working, but only makes enough money to feed the tenants, and the tenant is on bed rest.

The tenant seeks more time, to the end of November, 2020 to pay the rental arrears; it's just a matter of timing, but the latest would be November 30, 2020.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*. I have reviewed the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and I find

that it is in the approved form and contains information required by the *Act*. I also accept the testimony of the landlords' agent that it was served by registered mail on September 8, 2020, and the registered mail receipt provided by the landlords. The Notice is deemed to have been served 5 days later, or September 13, 2020. The tenant had 10 days from that date to pay the rent in full, but there is no question or dispute that the tenants did not do so. Therefore, I dismiss the tenant's application to cancel the Notice, and I find that the landlords are entitled to an Order of Possession. Since the effective date of vacancy has passed, I grant the Order of Possession effective on 2 days notice to the tenants.

The tenant does not dispute the amount owed, and I am satisfied that the landlords are entitled to a monetary order for rent owed commencing on March 15, 2020 up to October 15, 2020, for a total of 7 months and \$16,800.00.

Since the landlords have been successful with the application, the landlords are also entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed without leave to reapply.

I hereby grant an Order of Possession in favour of the landlords effective on 2 days notice to the tenants.

I hereby grant a monetary order in favour of the landlords as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$16,900.00.

This order is final and binding and may be enforced.

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 03, 2020

Residential Tenancy Branch